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TO

JUSTICE OF THE PEACE AND LOCAL GOVERNMENT REVIEW REPORTS

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ANALYTICAL INDEX TO CASES

A

ADOPTION

Dispensing with consent; "consent . . . unreasonably withheld"; illegitimate child; refusal by putative father; Adoption Act, 1950, s. 2 (4) (*a*), s. 3 (1).—The putative father of a boy aged three was serving a life sentence for having murdered the boy's mother. He refused his consent to the adoption of the boy on the sole ground that he loved his son:—*Held*, the welfare of the child was the primary consideration; the putative father had not the same right as a lawful parent; and, his consent was unreasonably withheld and should be dispensed with. (*Re* D (*an infant*). C.A.) 156

AFFILIATION

1. Legitimation of child by subsequent marriage of parties; child born two hours before mother's former marriage dissolved; Bastardy Laws Amendment Act, 1872, s. 3; Legitimacy Act, 1926, s. 1 (1).—At 7.30 *a.m.* on December 2, 1953, a woman, who was then married, but was living apart from her husband, gave birth to a child of which the respondent was the father. The woman's husband had obtained a decree *nisi* of divorce against her, and this was made absolute at 10 *a.m.* on the same day. On December 19, 1953, the woman married the respondent, and on March 26, 1957, she obtained a separation order against him on the ground of persistent cruelty, the order containing a non-cohabitation clause. On April 5, 1957, the woman preferred a complaint against the respondent asking for an affiliation order in respect of the child, and the respondent admitted paternity. The justices held that it was not open to them to hold that the woman was a "single woman" within the meaning of s. 3 of the Bastardy Laws Amendment Act, 1873, *quoad* the respondent and dismissed the complaint on that ground. The Divisional Court held that the woman could be a "single woman" *quoad* the respondent, reversed the justices' order, and ordered a re-hearing. At the re-hearing the justices were of opinion that the decree absolute became effective from the beginning of the day on which it was pronounced; that the mother was, therefore, unmarried at the time of the birth of the child, and that by s. 1 of the Legitimacy Act, 1926, the child became legitimated by the subsequent marriage of the parties. They, accordingly, dismissed the complaint on the ground that the child was not a bastard child, and the mother appealed:—*Held*, that the justices had correctly applied the rule that where a judicial act, such as the granting of a decree absolute, takes place, it dates from the earliest time of the day on which it occurs, and had, accordingly, come to a correct decision, and, therefore, the appeal must be dismissed. (Kruhlak *v.* Kruhlak. Q.B.D.) 360

2. "Single woman"; marriage of complainant with putative father; child born before marriage; subsequent separation of complainant and putative father; separation order containing non-cohabitation clause; Bastardy Laws Amendment Act, 1872, s. 3.—In 1953 a married woman, who had been living apart from her husband since 1940, gave birth to a bastard child of which the respondent was the putative father. Soon afterwards, a decree *nisi* which the husband had obtained against her was made absolute, and later she married the respondent. In March, 1957, she obtained against the respondent a separation order which contained a non-cohabitation clause. While

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living apart from the respondent under the order, she applied, as a "single woman" within the meaning of s. 3 of the Bastardy Laws Amendment Act, 1872, for a summons to be served on the respondent in respect of the bastard child:—*Held*, that she was a "single woman" *quoad* her husband, as she was at the time living apart from him under the separation order and was entitled to make the application. Mooney *v.* Mooney (1952) 116 J.P. 608 distinguished. (Kruhlak *v.* Kruhlak. Q.B.D.) 140

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ANIMALS

Poultry; records; poultry dealer; poultry purchased and sold for slaughter; poultry "fed" for slaughter; meaning of "fed"; poultry already fattened before purchase; Live Poultry (Movement Records)

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Order, 1954 (S.I. 1954, No. 122), art. 2 (1).—Article 3 of the Live Poultry (Movement Records) Order, 1954, requires poultry dealers to keep records, and failure to keep such records is an offence under s. 78 (1) (*i*) of the Diseases of Animals Act, 1950. By a proviso to art. 2 (1) of the order a person is not to be deemed a poultry dealer by reason only that he sells for slaughter poultry "which he has purchased and fed for the purpose." The appellant purchased poultry, which he sold for slaughter. Most of the birds were already fattened when he purchased them, and a substantial number were retained by him on his premises for one day only before re-sale and were fed to keep them alive and to avoid cruelty. The appellant did not keep the records required by the order and was convicted of failure to keep them, the magistrate being of opinion that "fed for slaughter" in the proviso to art. 2 (1) meant "fattened for slaughter":—*Held*, that "fed" did not mean "fattened", and that, as the appellant had fed the poultry for slaughter, he came within the proviso to art. 2 (1) and that the conviction must be quashed. (Wernick *v.* Green. Q.B.D.) 83

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Gift to local authority; "for general benefit and welfare of children" in home kept by local authority.—The testator, by his will, dated December 24, 1952, specifically devised two freehold houses on trust "to apply the income arising therefrom . . . for the general benefit and general welfare of the children for the time being in S. House . . . as a small token of my appreciation of the work carried on at such house . . . I desire that the superintendent for the time being of S. House should be consulted with a view to ascertaining his view as to the allocation of the before mentioned income." The testator died on April 5, 1955. S. House was a home provided and maintained by the county council pursuant to the Children Act, 1948, s. 15, for the accommodation of children in their care either received under s. 1 of the Act of 1948 or under the Children and Young Persons Act, 1933, ss. 57, 62, 63, 64 (as amended), 66 and 67:—*Held*, (i) on its true construction, the gift was not for the upkeep of S. House, but was for the general welfare and benefit of the children being there at any time; (ii) (LORD EVERSHED, M.R., dissenting) the gift was partly for a non-charitable object because it could be used for the provision of television sets, gramophones, records, and the like for children in S. House, which could not be regarded as coming within any conception of charity to be found in the preamble of the Charities Act, 1601, and, therefore, the gift was invalid. (*Re* Cole (deceased). Westminster Bank, Ltd., and Another *v.* Moore and Another. C.A.) 433

CRIMINAL LAW

1. Aiding and abetting; ingredients of offence; use of overloaded lorry on road; knowledge of driver's intention to commit offence; completion of sale of contents of lorry with such knowledge.—A lorry driven by one M, the servant of the owners, was loaded at a colliery with coal, which was part of a bulk purchase from the National Coal Board, for

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the purpose of transport to the purchaser. M had taken the empty lorry to the colliery, where it was loaded by means of a hopper operated by a servant of the Board until M told him to stop. M then took the loaded lorry to the Board's weighbridge. The weighbridge operator, H, a servant of the Board, after weighing the load, told M that it was overweight and asked M whether he intended to take it. M replied that he would risk it. H then made out a weight ticket and M drove away. There were facilities for off-loading at the colliery. M's employers were convicted of unlawfully using an overloaded vehicle on a road and the Board (who called no evidence) of aiding and abetting the offence:—*Held* (SLADE, J., dissenting): that the conviction of the Board was right as (i) the sale being one of unascertained goods, the property in the coal did not pass to the purchaser until the weighing was completed and the purchaser had given his assent, such assent being shown by the handing to and acceptance by M of the weight ticket; (ii) at the time when the property passed the Board's servant, H, knew of M's intention to commit the specific offence; (iii) the completion of the sale by the Board with knowledge of the intended illegality amounted to aiding and abetting the offence. Observations by DEVLIN, J., on the difference between assistance voluntarily given with regard to the commission of a crime and failure to prevent the commission of a crime in relation to the offence of aiding and abetting. (National Coal Board *v.* Gamble. Q.B.D.) ... 453

2. Bankruptcy; contributing to insolvency by gambling; debt "contracted in the course of and for the purposes of . . . trade or business"; debt to Inland Revenue; Bankruptcy Act, 1914, s. 157 (1) (*a*).—Section 157 (1) of the Bankruptcy Act, 1914, provides: "Any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, shall be guilty of a misdemeanour, if, having been engaged in any trade or business, and having outstanding at the date of the receiving order any debts contracted in the course and for the purposes of such trade or business —(*a*) he has, within two years prior to the presentation of the bankruptcy petition, materially contributed to or increased the extent of his insolvency by gambling or by rash and hazardous speculations, and such gambling or speculations are unconnected with his trade or business; or (*b*) he has, between the date of the presentation of the petition and the date of the receiving order, lost any part of his estate by such gambling or rash and hazardous speculations as aforesaid . . ." Unpaid income tax is a statutory liability and not a trade debt, and, accordingly, it does not come within the meaning of the words "debts contracted in the course of and for the purposes of . . . trade or business" within the meaning of s. 157 (1). (R. *v.* Vaccari. C.C.A.) 209

3. Carnal knowledge; mental defective; person whose original detention in institution was unlawful; Mental Deficiency Act, s. 56 (1) (*a*).—The respondent was convicted and sentenced on two charges of carnal knowledge of a woman in October, 1956, contrary to the Mental Deficiency Act, 1913, s. 56 (1) (*a*), while she was on licence from an institution for mental defectives. The woman had been committed to an approved school and in July, 1947, had been transferred to a certified institution under an order made by the Home Secretary under s. 9 of the Act. Thereafter continuation orders and orders transferring her to other institutions had been made. On the respondent's appeal against conviction, the invalidity of the original order

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for detention (owing to defects in the medical certificates) was admitted and the conviction was quashed on the ground that, as the woman had not been lawfully made subject to the Act of 1913, s. 56 (1) (*a*) did not apply. On appeal to the House of Lords by the Crown: —*Held*, proof that a person was detained as an inmate in one of the specified institutions and was under care or treatment therein as a defective or was shown by production of the licence to be out on licence from a place to which the system of licences under the Act of 1913 was applicable was *prima facie* proof that the person was a defective lawfully under care and treatment as such, but the foundation for the presumption, in the case of a person under detention or on licence, was the legality of the detention, and, if it were shown, or (as in the present case) admitted, that on the face of the documents produced and received in evidence without objection, the detention was illegal, the whole basis of s. 56 (1) (*a*) and the presumption of defectiveness went; the invalidity of the original order of detention had not been cured by the continuation orders and a subsequent re-classification of the woman placing her in a different category of defectiveness; and, therefore, the appeal would be dismissed. (Director of Public Prosecutions *v.* Head. H.L.) 259

4. Committal for trial; validity; some depositions not signed by examining justice; other signed depositions sufficient to justify committal for trial on some charges; Magistrates' Courts Rules, 1952, r. 5 (2).—Rule 5 of the Magistrates' Courts Rules, 1952, made under s. 15 of the Justices of the Peace Act, 1949, as extended by s. 122 of the Magistrates' Courts Act, 1952, provides: "(1) A magistrates' court inquiring into an offence as examining justices shall cause the evidence of each witness, including the evidence of the accused, but not including any witness of his merely to his character, to be put into writing; and as soon as may be after the examination of such a witness shall cause his deposition to be read to him in the presence and hearing of the accused, and shall cause the witness to sign the deposition. (2) One of the examining justices shall sign the depositions." An examining justice, who was inquiring into charges against the appellants and others of breaking and entering and receiving, spent three days in taking depositions. He duly signed the depositions taken on the first and third days, but, owing to an oversight, omitted to sign the depositions taken on the second day. The appellants were committed for trial on all the charges laid against them. The signed depositions were sufficient to justify committal on certain charges of receiving (subsequently reproduced in counts two and three of the indictment), but not on the other charges. The judge at the trial quashed counts one and four, which were based on the unsigned depositions. The appellants were convicted on counts two and three.—*Held*, that the committal for trial on these counts was valid, as there was sufficient evidence in the signed depositions to justify it, and was not invalidated by reason of the irregularity arising from the unsigned depositions which affected other counts, and, therefore, the convictions would be affirmed. (R. *v.* Edgar. R. *v.* Parr. R. *v.* Pontika. R. *v.* Rooney. C.C.A.) 342

5. Evidence; statement to police; inducement to make statement; interview with police officer before being charged; accused told officer would "need" statement from him.—A police officer who was investigating complaints of incest and indecent assault against the accused invited him to go to the police station, saying: "I need to take a

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statement from you ". The accused accompanied the officer to the station where a statement was taken from him. At the trial the defence submitted that this statement was not admissible in evidence because the words used by the officer amounted to an inducement relating to the accusation although in fact the accused was not charged with the offences until several weeks after the interview:—*Held*, the statement was admissible in evidence, since the words " I need to take a statement from you ", or even words conveying a suggestion that a person might have to accompany police officers to the station because they needed a statement from him when he got there, were not an inducement in any way relating to the charge or accusation. (R. *v.* Joyce. C.C.A.) 53

6. Evidence; statutory declaration; goods stolen when in possession of British Transport Commission; proof of dispatch; form of declaration; need for statement that goods were handed to Commission by declarant or by some person; Criminal Justice Act, 1948, s. 41 (3). —Where it is desired to prove by means of a statutory declaration under s. 41 (3) of the Criminal Justice Act, 1948, the dispatch of goods alleged to have been stolen when in the possession of the British Transport Commission, it is not sufficient that the deponent should state that the goods were parcelled, addressed and labelled by him or in his presence and that " the goods were handed to the Commission ". If the declarant can do so, he should state that the goods were handed to the Commission by him or by some person in his presence; if he cannot, the person who actually handed the goods to the Commission must also make a declaration. (R. *v.* Marley. C.C.A.) 413

7. False pretences; procuring delivery of chattel with intent to defraud; impersonation at driving test to obtain driving certificate to enable another person to obtain driving licence; forgery; signature on driving certificate; signature in driving examiner's journal; Larceny Act, 1916, s. 32 (1); Forgery Act, 1913, s. 4 (1), s. 6.—The defendants, W and A, were brothers. W was a qualified driver of motor vehicles and A had only a provisional licence. A having made an appointment to take a driving test on July 15, 1957, it was agreed between them that W should take the test in A's place. On July 15 W presented himself for the test, throughout the test impersonated A, and handed to A the certificate of competence in which the examiner certified that A had passed the driving test. On September 11, 1957, A was issued with a driving licence on presenting a completed application form together with the certificate and the fee:—*Held*, (i) W procured a chattel (*viz.*, the driving certificate) to be delivered to him for the use or benefit of himself within s. 32 (1) of the Larceny Act, 1916, since he desired the certificate in order to hand it over to his brother, and he did so with intent to defraud since, although nothing of value was obtained by the deceit which was practised, he intended to use the document to induce the county council to take a course of action which they would not otherwise take and which it was their duty not to take if they had known all the facts, and also to hand to A a piece of paper (*i.e.*, a driving licence); (ii) A was an accessory before the fact of that offence and so could be charged as a principal; (iii) similar considerations applied to charges of procuring the driving licence, contrary to s. 32 (1); (iv) W having, at the conclusion of the test, signed the driving examiner's journal and the driving certificate, could be properly charged with the forgery of a document under s. 4 (1) of the Forgery Act, 1913, and A having presented the certificate

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when he applied for a driving licence, with uttering it under s. 6 of the Act of 1913. (R. *v.* Potter and Another. Leicester Asz.) .. 234

8. Indictment; joinder of counts; separate indictments for manslaughter and other offences; evidence on each indictment substantially similar; bill of indictment granted including count for manslaughter and other offences.—The first two prisoners were indicted for manslaughter, and in a second indictment they were charged with three other prisoners on counts of stealing or receiving a lorry laden with lead. Almost the whole of the evidence in support of each indictment would, if each indictment had been heard separately, have had to be called again on the other:—*Held*, in the circumstances it was desirable in the interests of justice and in the public interest that all the charges laid against the five prisoners should be disposed of in one trial, and, it not being proper to amend either indictment by including it in the charges contained in the other, a bill of indictment would be granted against all the prisoners in which a charge of manslaughter against the first two prisoners would be included. (R. *v.* Smith and Others. Central Criminal Court) 122

9. Indictment; place; "in the county of S or elsewhere"; Indictments Act, 1915, s. 3, sch. I, r. 9; evidence; power of judge to call witness; complaint; no evidence by complainant herself; evidence by another witness.—On a charge of incest with the appellant's daughter aged five, the particulars of offence charged the offence as having been committed "in the county of Sussex or elsewhere":—*Held*, that, incest being an offence wherever in England it was committed, the words naming the place of the offence were surplusage and did not affect the validity of the indictment. At the trial the child was placed in the witness-box by the prosecution, but was unable to give any evidence. Evidence by the child's grandmother of a complaint made to her by the child, in which she named the appellant as her assailant, was admitted. The appellant, after being for some days with the child, had left her in her grandmother's house, where also the child's step-grandfather was, and some hours later the child was examined by a doctor, who found that there had been sexual interference with her. In opening the case for the defence counsel referred to the possibility of the offence having been committed by the child's step-grandfather. The prosecution had not called the step-grandfather as a witness, and the judge, after expressing the view that it would have been desirable for his evidence to be heard, decided that he himself had no power to call the step-grandfather as a witness at that stage of the trial. The jury convicted the appellant:—*Held*, (i) the judge could have called the step-grandfather himself, as a judge has power to call a witness who he thinks can throw light on the case even after the close of the case for the prosecution; (ii) it is undesirable that a child as young as five should be called as a witness; (iii) the basis of the admissibility of a recent complaint being that it goes to show consistency of the complainant's story and conduct, such complaint is inadmissible where the complainant herself has given no evidence. In the circumstances, however, the court would apply the proviso to s. 4 (1) of the Criminal Appeal Act, 1907, and dismiss the appeal. (R. *v.* Wallwork. C.C.A.) 299

10. Sentence; alleged breach of probation order; right of Court of Criminal Appeal to inquire whether breach proved; offence during period of probation; illegal sentence passed; offender released, but

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conviction not quashed; power to sentence for original offence; Criminal Justice Act, 1948, s. 6 (4) (*b*), (6), s. 8 (5).—Where an offender who has been placed on probation is brought back to a court of Assize or quarter sessions to receive sentence for the original offence in view of an alleged breach of the terms of the probation order and is sentenced by the court on that basis, and then appeals to the Court of Criminal Appeal against the sentence, the Court of Criminal Appeal has the right to consider whether the breach was properly proved at the court of Assize or quarter sessions as well as to review the *quantum* of the sentence. In January, 1957, the appellant was convicted at quarter sessions of shopbreaking and larceny and was placed on probation for two years. In October, 1957, he was convicted at a magistrates' court of larceny and was sentenced to two months in a detention centre. As that sentence was less than the statutory minimum of detention, namely, three months, he was released by order of the Home Secretary after eight days, but the conviction of the magistrates' court was not quashed. In November, 1957, he was brought back to quarter sessions to receive sentence for the original offence, and the court, taking the view that he had failed to comply with a requirement of the probation order and purporting to act under s. 6 (4) (*b*) of the Criminal Justice Act, 1948, sentenced the appellant to borstal training. On appeal against sentence:—*Held*, (i) that the Court of Criminal Appeal had power to consider on the appeal whether failure to comply with a requirement of the probation order had been properly proved at quarter sessions; (ii) that, if there had been an application to the High Court by way of *certiorari*, the conviction as well as the sentence at the magistrates' court would have been quashed, and, therefore, that conviction could not be relied on by quarter sessions to show failure to comply with a requirement of the probation order; (iii) that, in any event, s. 6 (4) (*b*) of the Act of 1948 could not be made use of by quarter sessions by reason of subs. (6); and, therefore, the sentence of borstal training must be quashed. *Quaere*, whether where a magistrates' court had convicted an offender, but imposed an invalid sentence, the offender had been "convicted and dealt with" within the meaning of s. 8 (5) of the Criminal Justice Act, 1948. (R. *v.* Green. C.C.A.) 177

11. Sentence; borstal training; further offences committed while on licence, absconding, or absent without leave from borstal; principles applicable.—Though there is no general principle under which a second or third sentence of borstal training is appropriate or inappropriate, and though each case must be considered on its particular facts, occasions on which a third sentence is appropriate are likely to be rare. The first factor to consider is whether the offender is (i) a person released on licence from borstal, (ii) an absconder from borstal, (iii) an absentee without leave from borstal. In the case of a further offence by an offender within group (i), the court should ascertain what period of his original training is outstanding in the event of his being recalled, and whether he will be recalled to borstal. As a general rule, a sentence of a short term of imprisonment with a view to recall is appropriate in this case, unless the Prison Commissioners indicate that the offender will not be recalled or the further offence is so serious as to require a substantial sentence. If, however, the Prison Commissioners report that the offender made a good response to borstal training, but appears to need a longer period of training than one remaining part of his original sentence would provide, a further sentence of borstal training may be appropriate. In the case of an offender within group (ii), if

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the absconding and the further offence take place within approximately the first twelve months of the original borstal sentence, a short term of imprisonment with a view to recall is desirable, but if the absconding and further offence take place after that period, the court may take the view that further borstal training is not likely to be beneficial and that a sentence of imprisonment is appropriate. A person absent without leave who commits a further offence during his absence should ordinarily be treated as an absconder. (R. *v.* Noseda. R. *v.* Field. R. *v.* Knight. R. *v.* Fitzpatrick. C.C.A.) ... 373

12. Sentence; Irish offender; desire of court to return offender to Ireland; no jurisdiction to make return a condition of probation order; common law binding over appropriate; Criminal Justice Act, 1948, s. 3 (1), (2).—A court has no jurisdiction to make it a term of a probation order under s. 3 of the Criminal Justice Act, 1948, that the offender shall return to Ireland and remain there. Where, in the case of an offender from the Republic of Ireland or Northern Ireland, a court desires, instead of passing a sentence of borstal training or imprisonment, to secure the return of the offender to Ireland, the appropriate course is to bind him over at common law and make it a condition of the recognizance that he returns forthwith to his own country and does not return to England for a specified period. (R. *v.* McCartan. C.C.A.) 465

13. Sentence; outstanding offences; offences by soldier; trial by court-martial pending; offences both under civil and military law.—The appellant, a soldier, was committed by a magistrates' court to quarter sessions for sentence. At quarter sessions he asked the court to take into consideration a number of offences in respect of which he was awaiting trial by court-martial, and that request was supported by his commanding officer. The offences included eight offences of larceny from other soldiers, and all constituted offences under civil as well as under military law:—*Held*, that as the outstanding offences were offences with which a civil court would have had jurisdiction to deal, quarter sessions could properly take them into consideration in passing sentence, but that they could not have done so had the outstanding offences been of a purely military nature. (R. *v.* Anderson. C.C.A.) 282

14. Sentence; validity; one sentence for five offences; intention to pass concurrent sentences; no reference to sentences being concurrent.—The applicant was convicted on an indictment containing five counts, the first for larceny, the second, third and fourth for obtaining money by false pretences, and the fifth for fraudulent conversion. Separate verdicts were returned on each count. In passing sentence, the recorder said: "You have been convicted on the plainest evidence of deliberate, calculated and systematic frauds . . . you will go to prison for four years' corrective training." The sentence indorsed on the indictment was simply: "To undergo corrective training for four years." The applicant obtained leave to appeal against the convictions on the first three counts. The Court of Criminal Appeal quashed the conviction on the first count and added: "In other respects the appeal fails and there will be no alteration of sentence". The applicant obtained leave to move for *habeas corpus* on the ground that he was detained in prison when no lawful sentence existed:—*Held*, that although the recorder did not use the word "concurrent", it had manifestly been his intention to pass a concurrent sentence on

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each count, and, therefore, the sentence was lawful and the application failed. *Per curiam:* When a court is in fact passing concurrent sentences on each count of an indictment, it is always desirable that the court should use the words such as "on each count" or "concurrent". (*Re* Hastings. Q.B.D.) 283

15. Sexual offence; abduction of unmarried girl under eighteen; intention to have unlawful sexual intercourse; meaning of "unlawful"; Sexual Offences Act, 1956, s. 19 (1).—Section 19 (1) of the Sexual Offences Act, 1956, makes it an offence "for a person to take an unmarried girl under the age of eighteen out of the possession of her parent or guardian against his will, if she is so taken with the intention that she shall have unlawful sexual intercourse with men or with a particular man". "Unlawful" in the sub-section means illicit, *i.e.*, outside the bond of marriage, and does not mean "forbidden by law", *e.g.*, as being intercourse with a girl under sixteen. (R. *v.* Chapman. C.C.A.) 462

16. Trial; jury; all jurors summoned released; praying of tales by clerk of the peace; jury composed entirely of talesmen; irregularity necessitating new trial.—When the applicant appeared to take his trial at a borough quarter sessions it was found that the panel of jurors who had been summoned the previous day had, owing to a misunderstanding, been released. The clerk of the peace purported to pray a *tales de circumstantibus* by securing the attendance of twelve persons whom he fetched from a neighbouring building to form a jury to try the case. Counsel for the defence raised no objection to the procedure:—*Held*, s. 37 of the Juries Act, 1825, being inapplicable to quarter sessions, the common law applied; there could not be a jury composed entirely of talesmen; and, therefore, there had been a mistrial, and the court would order a *venire de novo* directing that the appellant be re-arrested and tried at the next quarter sessions of the borough. *Per curiam:* Where there is a complete shortage of jurors named in the panel and it is desired that the trial should proceed on the same day, the proper course is to require the sheriff to return a further panel of jurors *instanter*. (R. *v.* Solomon. C.C.A.) 28

17. Trial; plea; fitness to plead; mute of malice; burden of proof.—The burden of proving that a prisoner is mute of malice, and not by visitation of God, is on the prosecution. Where on the evidence there is any doubt about the prisoner's condition the jury must find him mute by visitation of God. If the jury find the prisoner mute by visitation of God, the burden is then on the prosecution to show that, despite his muteness, he is capable of pleading to and taking his trial on the indictment. The test is whether he can communicate, by signs, writing, or other means, with his advisers and with the court. If he cannot, he is not fit to stand his trial. (R. *v.* Sharp. Birmingham Asz.) 51

18. Trial; retirement of jury; question to court indicating different approach to issue; necessity for further direction; verdict; substitution; conviction of burglary and larceny; jury discharged from giving verdict on alternative count for receiving; verdict of guilty of receiving substituted; Criminal Appeal Act, 1907, s. 5 (4).—There is no general rule that, where a jury, after retirement, return and put

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a question to the court which indicates an approach to the issue different from that put forward by the Crown, the judge should give a further direction and review all the evidence relevant to the matters arising out of the question, but if the form of the question shows that the jury appear to be assuming facts or drawing inferences for which there was no supporting evidence, further direction is necessary, and the jury should be reminded how far the relevant evidence went. The appellant was charged with burglary and larceny, and, alternatively, with receiving part of the stolen property. Counsel for the Crown had invited the jury to convict of burglary and larceny on the basis that the appellant had himself broken and entered the premises named. No suggestion was made that he should be convicted on the basis that, while not taking part in the actual burglary, he had organized or assisted in it and thereby become an accessory before the fact, and the summing-up contained no reference to this point. The jury, after retirement, returned and put this question to the court: "If [the appellant] in fact remained at [his flat], but organized the breaking-in of the [premises named], put pressure on someone to carry out the breaking, and supplied a key or other equipment, could [he] be found guilty of burglariously breaking and entering the premises?" The judge replied: "The answer is, he is an accessory before the fact and the short answer is 'Yes'." The jury convicted on the count charging burglary and larceny and were discharged from giving a verdict on the count which charged receiving:—*Held*, that a more detailed direction was called for in the circumstances of the case; that on this ground the conviction of burglary and larceny could not be upheld; but that the court, exercising its powers under s. 5 (2) of the Criminal Appeal Act, 1907, would substitute a verdict of guilty of receiving. (R. *v.* Adair. C.C.A.) 376

19. Venue; postponement of trial; case sent to next Assize but one in different county; jurisdiction to make order; Criminal Justice Act, 1925, s. 14 (2); Administration of Justice (Miscellaneous Provisions) Act, 1938, s. 11 (3).—After the trial of a defendant had begun at Exeter Assizes, and reports of the previous day's proceedings, which were prejudicial to the defendant, had appeared in newspapers, the judge, after discussion with counsel for the defendant, having discharged the jury, acted under s. 14 (2) of the Criminal Justice Act, 1925, and directed that the trial should take place at the winter Assize for the county of Southampton (the next Assize but one). On a motion by the Attorney-General under s. 11 (3) of the Administration of Justice (Miscellaneous Provisions) Act, 1938, for an order directing trial at the next sessions of the Central Criminal Court beginning in December, 1957:—*Held*, that the power conferred by s. 14 (2) of the Act of 1925 to direct trial at a court of Assize for some other place was limited to directing trial at the next assize for that place, and, therefore, the order by the judge at Exeter Assizes was made without jurisdiction, and the order directing change of venue as prayed for by the Attorney-General should be made. *Per curiam:* Where removal to another court is sought on the ground of prejudice and there is any doubt with regard to a suitable court to which to send the case, it would be convenient to discharge the jury and order trial at the next Assizes or sessions for the county or city where the indictment has been preferred, leaving it to the prosecution or defence to apply to the Queen's Bench Division for an order under s. 11 (3) of the Act of 1938. (R. *v.* Oliver. Q.B.D.) 24

E

EXTRADITION PAGE

1. Discharge of fugitive; power of Court of Appeal; original, not appellate, jurisdiction; Fugitive Offenders Act, 1881, s. 10.—On appeal by an appellant from an order of the Divisional Court refusing him relief under s. 10 of the Fugitive Offenders Act, 1881, the Crown raised the preliminary point that the Court of Appeal had no jurisdiction to hear an appeal under the Act of 1881:—*Held*, by the Act of 1881 the Court of Appeal was given only original jurisdiction, and, therefore, the appeal failed *in limine*. (*Re* Baron Kalman de Demko. C.A.) ... 477

2. Habeas corpus; right of representative of requisitioning government to be heard; crime alleged to have been committed in Norwegian ship; no evidence with regard to position of ship; Extradition Act, 1870, s. 25.—Where an alleged criminal has been committed to prison pending extradition, the representative of the requisitioning government may be directed to be served under R.S.C., Ord. 59, r. 17, with notice of motion for *habeas corpus* on behalf of the alleged criminal, and may be represented and heard on the motion. Where this course had not been taken, but the requisitioning government had instructed counsel who was present in court on the hearing of the motion:—*Held*, that the court would hear counsel for the requisitioning government should the occasion arise. An Italian seaman, one M, was alleged to have murdered a fellow seaman on board a Norwegian ship, and had been committed to prison to await extradition. No evidence had been given before the committing magistrate of the position of the ship at the time of the alleged crime. Article 1 of the Extradition Treaty of 1873 with Norway provided: "The High Contracting Powers engage to deliver up to each other those persons who, being accused or convicted of a crime in the territory of the one party, shall be found within the territory of the other party . . ." Article 2 specified the crimes to be treated as extradition crimes, number 17 being "assaults on board a ship on the high seas, with intent to destroy life or to do grievous bodily harm". M applied for *habeas corpus* on the ground that there was no evidence that the alleged crime had been committed within the territory of the Norwegian government, and that, therefore, it was not extraditable:—*Held*, that in the treaty the word "territory" was synonymous with "jurisdiction"; the alleged crime was within the jurisdiction of the Norwegian government wherever the ship was; and, therefore, the motion failed. (R. *v.* Governor of H.M. Prison, Brixton. *Ex parte* Minervini. Q.B.D.) 473

F

FOOD AND DRUGS

1. Food hygiene; contamination; no injury to public health; Food and Drugs Act, 1955, s. 13 (1); Food Hygiene Regulations, 1955 (S.I. 1955, No. 1906), reg. 8.—Section 13 (1) of the Food and Drugs Act, 1955, authorizes the making of regulations "for securing the observance of sanitary and cleanly conditions and practices in connexion with . . . (b) the . . . exposure for sale . . . of food intended for . . . human consumption, or otherwise for the protection of the public health . . ." Reg. 8 of the Food Hygiene Regulations, 1955, made under the section, provides that "a person who engages in the handling of food . . . (a) shall not so place the food, or permit it to be so placed, as to involve any risk of contamination". A company which carried on the business of retail fishmongers permitted fish and other food to be exposed for

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sale in a new shop designed and constructed in the most up-to-date manner. The company was prosecuted for permitting food to be so placed as to involve the risk of contamination, contrary to reg. 8 (*a*) and reg. 32 (3) of the regulations. The justices found that there was a risk of contamination to the food, *e.g.*, from customers in the shop, but that the contamination was not of such a nature as to be injurious to the public health, and they convicted the appellants. On appeal against conviction:—*Held*, that, the object of s. 13 of the Act of 1955 being the protection of the public health, the words "risk of contamination" in reg. 8 must be interpreted as being limited to risk of such contamination as was injurious to the public health, and, therefore, the justices should have found that no offence had been committed by the company. (Macfisheries (Wholesale & Retail) Ltd. *v.* Coventry Corporation. Q.B.D.) 18

2. Milk; sale of article not of substance demanded; sliver of glass in milk bottle; Food and Drugs Act, 1955, s. 2.—The respondents sold milk for children in an infants' school. An infant who was drinking milk by means of a straw sucked up with it a small sliver of glass which was sharp enough to penetrate the skin. The respondents were charged at a magistrates' court with selling to the prejudice of the purchaser an article of food, namely milk, which was not of the substance demanded by the purchaser, contrary to s. 2 of the Food and Drugs Act, 1955. The justices, relying on Edwards *v.* Llaethdy Meirion, Ltd. (1957) 107 L.J. 138, where a clean and sterilised cap had been found in a milk bottle, dismissed the information:—*Held*, whereas the sterilized and clean cap of a bottle would not contaminate the milk in any way, a sliver of glass sharp enough to penetrate the skin was in a different position and a potential source of danger and the case must be remitted to the justices with a direction that the offence was proved. (Southworth *v.* Whitewell Dairies, Ltd. Q.B.D.) 322

H

HIGHWAYS

1. Hindering by negligence free passage; opening of motor car door by passenger; Highway Act, 1835, s. 78.—By s. 78 of the Highway Act, 1835: "... if any person shall in any manner ... by negligence or misbehaviour prevent, hinder or interrupt the free passage of any person ... on any highway", he shall be guilty of an offence. The words "if any person shall ... by negligence ... hinder ..." include a passenger in a vehicle, and ought not to be construed as referring only to a driver. (Baldwin *v.* Pearson. Q.B.D.) 321

2. Negligence; non-feasance; misfeasance; construction of highway by county council; highway later taken over by urban district council; subsequent death of cyclist due to original dangerous construction.—Between 1938 and 1940 a county council constructed a road under the powers conferred by the Development and Road Improvement Funds Act, 1909, s. 8 and s. 10. In 1941 an urban district council took over the road pursuant to s. 32 of the Local Government Act, 1929, and thus became the highway authority with regard to it. One night in October, 1955, a motor cyclist collided with the kerb of an "island" approaching a roundabout in the road, the siting and lighting of which had not been altered since its first construction in 1938–40, and received injuries which proved fatal. In an action by his widow for damages under the Fatal Accidents Acts, 1846–1908,

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and the Law Reform (Miscellaneous Provisions) Act, 1934, against the urban district council (now a county borough) as highway authority: —*Held*, the action failed *in limine* because the urban district council had merely kept the island as they found it when they took over the road; even if (which was not decided) the county council had so negligently sited the island as to cause a danger for which they might have been liable, any failure by the urban district council to remove the danger by improving the road consisted exclusively of non-feasance to which the ordinary immunity from liability of a highway authority applied. *Per curiam:* The immunity afforded to a private owner of a road who dedicates it as a public highway has no application to a highway authority which constructs a new road pursuant to s. 10 of the Act of 1909. The exemption from liability for non-feasance applies to all highway authorities made responsible by statute for the maintenance of any roads as successors to the surveyors of highways unless it is excluded by the terms of some special enactment. The positive act of constructing a road, if it be done negligently, amounts to misfeasance and not mere non-feasance. Failure to light or give some other form of warning of an obstruction on the highway by a highway authority who themselves created the obstruction is taken out of the category of mere non-feasance, and brought within the category of misfeasance, by their positive act of creating the obstruction giving rise to the need for lighting or other means of warning. (Baxter *v.* Stockton-on-Tees Corporation and Another. C.A.) 443

3. Non-repair; grating admitting light to cellar; dedication as part of highway; liability of owner or occupier of premises for resulting accident; Public Health Acts Amendment Act, 1890, s. 35 (1).—The plaintiff was walking along the pavement of a public highway when her left leg went through an iron grating. The grating, which admitted light to the cellar of an adjacent building, was in bad condition and constituted a nuisance. The defendant, the occupier of the adjacent building, knew of its condition and failed to remedy it. The grating formed part of the dedicated highway. The plaintiff claimed damages for nuisance caused by the defendant's breach of his statutory duty under s. 35 (1) of the Public Health Acts Amendment Act, 1890, to repair the grating. The defendant contended that he was not under a duty to repair the grating because it was vested in the local authority by reason of s. 149 of the Public Health Act, 1875, and it was their duty to repair the highway or any part thereof. Alternatively, he said that a breach of s. 35 (1) of the Act of 1890 did not give rise to a cause of action under the sub-section or at common law:—*Held*, (i) s. 35 (1) of the Act of 1890 imposed the duty to repair the structures on the surface of or under a street referred to therein on the owner or occupier of the adjoining building, whether they had been the subject of dedication or not, and, therefore, the defendant, as occupier of the adjoining building, and not the highway authority, was under a duty to keep the grating in repair; (ii) the defendant had failed in his duty to keep the grating in repair and allowed the same to become a nuisance, and therefore, he was responsible at common law for the injuries suffered by the plaintiff. (Macfarlane *v.* Gwalter. C.A.) 144

4. Repair; bridge carrying road over railway; diversion roads along embankment linking old road to bridge; embankment slipping into railway cutting; "immediate approaches" of the bridge; liability

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to repair; "necessary works" connected with bridge; Railways Clauses Consolidation Act, 1845, s. 46.—By a private Act of 1847, which incorporated the Railways Clauses Consolidation Act, 1845, a railway company was authorized to construct an extension to their railway. The extension crossed a turnpike road, which has since become a county highway. The company built a bridge to carry the road over the railway, and so comply with s. 46 of the Railways Clauses Consolidation Act, 1845, which provides that "if the line of the railway cross any turnpike road or public highway, then . . . such road shall be carried over the highway . . . by means of a bridge . . . and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed and at all times thereafter maintained at the expense of the company . . ." The railway constructed two stretches of diversion road, one at each end of the bridge, one approximately 143 yards and the other approximately 367 yards long, to connect the bridge with the road. These diversion stretches ran along the embankment of the railway cutting. Part of the embankment at the end furthest from the bridge of the longer of these diversion stretches began to give way, and thus endanger the road. The highway authority (the Monmouthshire county council) sued for a declaration that the British Transport Commission, as successor to the liabilities and obligations of the railway company, was liable to repair the diversion roads and the embankment along which they ran, and for an order directing the commission to carry out the necessary repairs:—*Held*, the railway company (and, therefore, the commission) were not liable to repair that part of the embankment and road which were in disrepair, because (i) they were too distant from the bridge to be its "immediate approaches"; (ii) the required repairs were not "necessary works connected" with the bridge or its immediate approaches because they were necessary for the railway company's embankment, and not for the bridge. *Per* PARKER, L.J.: "Necessary works connected therewith" are really matters such as buttresses and revetments and the like, which are directly, and not indirectly, connected with the structure of the bridge. (Monmouthshire County Council *v.* British Transport Commission. C.A.) 10

5. Widening; use of part of burial ground; faculty; re-interment of human remains; common grave.—Where a local authority sought in a consistory court a licence and faculty to enable them to use part of a cemetery for the widening of the highway, the scheme involving interference with a number of graves and the exhumation and re-interment of human remains, certain unidentified remains being re-interred in a common grave:—*Held*, there was no general rule or doctrine of the Church of England to the effect that the dead, once buried in consecrated ground, should for ever take absolute priority over the compelling needs of the living, nor was there any doctrinal objection to the re-interment of large numbers of unidentified remains in a common grave, but in the present case no such weighty reasons had been proved as would justify the granting of a faculty. (Norfolk County Council *v.* Knights and Others. Norwich Consistory Court.) 115

HIRE-PURCHASE

Finance company; disposal of goods without specified percentage of cash price being paid; defence; absence of *mens rea*; Hire-Purchase and Credit Sale Agreements (Control) Order, 1956 (S.I. 1956, No. 180), art. (1).—By art. 1 of the Hire-Purchase and Credit Sale Agreements

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(Control) Order, 1956: "A person shall not dispose of any goods to which this order applies in pursuance of a hire-purchase or credit sale agreement . . . unless the requirements specified . . . are or have been satisfied in relation to that agreement." The requirements included one that a specified percentage of the cash price, which varied with the class of goods, had to be paid before the signing of the agreement. In the case of "mechanically propelled vehicles" the percentage was 50 *per cent.* so that one effect of the order was that a purchaser of a motor car on hire-purchase had to pay a deposit of at least 50 *per cent.* of the cash price. As a result of a conspiracy between a company engaged in buying and selling cars, two of its officers, and certain customers who required cars on hire-purchase terms, a false inflated cash price was stated to a hire-purchase finance company, who were thereby induced to advance more than they would have done had the truth been told to them. They were also informed untruthfully that the customer had already paid his 50 *per cent.* of the false cash price, whereas, in fact, he had not paid 50 *per cent.* of the true cash price. In those circumstances the hire-purchase finance company executed transactions forbidden by art. 1, inasmuch as 50 *per cent.* of the true cash price had not been paid before the signing of the agreements, but they admittedly acted innocently throughout. The hire-purchase finance company were convicted of the offences of disposing of goods in circumstances which contravened art. 1 and the company engaged in buying and selling cars and its officers were convicted of aiding and abetting the commission of those offences:—*Held*, that, having regard to the object of the order and the fact that its words were an express and unqualified prohibition of the acts done by the hire-purchase finance company, *mens rea* was not an ingredient of the offences with which they were charged, and the consideration of it was irrelevant, and, therefore, the convictions were right. (R. *v.* St. Margaret's Trust, Ltd. and Others. C.C.A.) 312

HOSPITALS

Employment of consultant surgeon; contract subject to terms and conditions of service issued by Minister; termination of employment by regional hospital board; non-compliance with terms of service; remedies; measure of damages.—The plaintiff at the time of the establishment of the National Health Service on July 5, 1948, was employed as a consultant surgeon at a hospital administered by a local authority which, after July 5, 1948, came under the administration of the first defendant, a regional hospital board, on behalf of the Minister of Health. On July 1, 1949, the board, by a circular, offered to continue the plaintiff's appointment, subject to the terms and conditions of service of hospital medical staff stated in a memorandum issued by the Minister on June 7, 1949. By cl. 16 of these terms a consultant who considered that his appointment was being unfairly terminated by a regional hospital board was entitled to send a full statement of the facts to the Minister, who was to obtain the written view of the board concerned and place the case before a professional committee for their advice, in the light of which he would decide whether to confirm the termination of service, or to direct reinstatement, or to arrange some third solution agreeable to the parties concerned. This procedure was to be completed before a board's decision to terminate a consultant's services was carried into effect. The plaintiff continued in the employment of the board as hospital consultant. In January, 1952, the board purported to determine the

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plaintiff's employment as from April 30, 1952, and the plaintiff, considering his dismissal unfair, caused the Minister to be informed of the facts, but it was maintained on behalf of the Minister that no appeal lay, and the Minister, therefore, reached no decision under cl. 16. The plaintiff brought an action against the board and the Minister, in which he claimed declarations that his employment with the board was subject to the terms and conditions of service issued by the Minister, and that it was never validly determined. He also claimed damages for breach of contract or wrongful dismissal and, as against the Minister, a declaration that, in failing to comply with cl. 16, the Minister acted in breach of his statutory duty under the National Health Service Act, 1946:—*Held*, (i) a declaration would be granted against the Minister that, in failing to comply with cl. 16 of the terms and conditions of service, he had acted in breach of his statutory duty under the National Health Service Act, 1946; (ii) the termination of the plaintiff's services by the board was a breach of the board's contractual obligations to him since his contract was governed by cl. 16 of the terms and conditions of service issued by the Minister and that clause had not been complied with; (iii) the plaintiff was not entitled to a declaration that his contract with the board had never been validly determined because his contract was one between master and servant, and, therefore, his only remedy was recovery of damages for breach of contract (*dictum* of LORD KEITH OF AVONHOLM in Vine *v.* National Dock Labour Board [1956] 3 All E.R. at p. 948, applied), the measure of damages being his loss of salary for the period during which he would have been employed by the board if his appeal under cl. 16 had been rightly decided. (Barber *v.* Manchester Regional Hospital Board and Another. Q.B.D.) ... 124

HOUSING

1. House of local authority; differential rent scheme; rents based on annual gross income of tenant; excess rebate granted; recovery of *ex post facto* rent.—The local authority owned and managed a housing estate consisting of 1,850 tenancies, the rents of which were subsidised at an average of 12*s.* per week. In 1955 the local authority decided to introduce a differential rent scheme, and for that purpose they gave all their tenants notice to quit on April 5, 1955, and offered them new tenancies at an economic rent if their gross annual income was £620 (or a weekly average of £11 18*s.* 6*d.*) or above. These maximum rents could be reduced on application by a tenant by way of rebate up to 12*s.* per week if his annual gross income was below £620. A leaflet setting out the scheme defined annual gross income and provided in para. 4 regarding the alteration of rents as follows: "Any increase or decrease in the gross income necessitating a re-assessment of rent must be notified immediately by the tenant or his agent calling at this office to complete the appropriate forms, produce such documentary evidence as may be necessary to substantiate, and leave the current rent card for alteration. Alterations in rent will be operative (a) from the first rent collecting period after notification, as above, of any change of financial circumstances requiring a decrease in rent; (b) from the first rent collecting period after a change of financial circumstances arose requiring an increase in rent." In February, 1955, the tenant was given notice to quit and a new tenancy was offered him at a maximum rent of 34*s.* 5*d.* per week (later reduced to 29*s.* 4*d.*) subject to rebates according to the scheme. On his application the maximum rebate of 12*s.* was granted. He paid

HOUSING—*continued* PAGE

that rent during the financial year 1955–56. During the summer of 1955 he did a good deal of overtime. In February, 1956, he was asked to make a return of his annual gross income for the year 1955–56. On the figures received the local authority came to the conclusion that as from June 6, 1955, the tenant was only entitled to a rebate of 2*s.* per week. They, therefore, assessed the rent for the year 1956–57 at 37*s.* 4*d.* plus 10*s.* in order to recoup them for the under-payment of rent for the year 1955–56, thus increasing the rent by £1 per week. The tenant protested against that increase, but, on being told that, if he did not pay it, he would be turned out of his house, he submitted to paying it until he determined his tenancy on October 7, 1957. When the tenant left £10 3*s.* 2*d.* was outstanding on account of excess rebates for the year 1955–56. The tenant's rent card showed no amount of arrears of rent. The local authority sued the tenant for that amount as arrears of rent from June 6, 1955, to April 1, 1956: —*Held*, (i) the agreement between the local authority and the tenant was to the effect that the tenant should repay by way of increase of rent of 10*s.* per week a sum equal to the excess rebate for the previous year, and the termination of the tenancy put an end to his obligation; (ii) assuming that para. 4 of the leaflet enabled the local authority to increase the rent *ex post facto* without the consent of the tenant, that power was never exercised and there was no increase of rent for the year 1955–56, and, therefore, the demand for arrears of rent failed. (Havant and Waterloo Urban District Council *v.* Norum. C.A.) ... 362

2. House of local authority; increase of rent; need of previous determination of tenancy; Housing Act, 1936, s. 85 (6).—The defendant was tenant of a house of which the plaintiff council was landlord on a weekly tenancy which expired at midnight on any Sunday, the rent being £1 5*s.* 7*d.* a week, due in advance on Monday of each week. By notices dated August 21, 1956, and March 22, 1957, the council informed the defendant that they proposed to increase his rent by 12*s.* a week as from April 1, 1957. By s. 85 (6) of the Housing Act, 1936 (now replaced by s. 113 (4) of the Housing Act, 1957), a local authority "shall from time to time review rents and make such changes . . . as circumstances may require". The defendant refused to pay the increased rent, and on June 14, 1957, the council served on him a notice to quit the house by noon on Monday, July 1, 1957. In an action by the council for possession of the house, arrears of rent, and mesne profits:—*Held*, s. 85 (6) of the Act of 1936 did not empower the council to raise the defendant's rent without having first terminated the tenancy; the purported notice to quit of June 14, 1957, was bad as it sought to terminate the tenancy at a time other than the end of a current week's tenancy; and, therefore, the action failed. (Bathavon Rural District Council *v.* Carlile. C.A.) ... 240

HUSBAND AND WIFE

1. Appeal; fraud; notice of motion; jurisdiction; Summary Jurisdiction (Married Women) Act, 1895, s. 11.—The fact that the ground of appeal is fraud or conduct akin to duress does not make it improper to proceed by motion on an appeal in order to obtain the discharge of a separation order made by justices on the ground of the wife's adultery. (Byatt *v.* Byatt. P.D. & A.) 47

HUSBAND AND WIFE—*continued* PAGE

2. Desertion; defence; reasonable belief in deserted spouse's adultery; belief induced by conduct.—The parties were married in 1954 and the wife continued to be in employment during the marriage. In May, 1957, the husband overheard a conversation between the wife and his sister in which the wife stated, in effect, that a man at her place of employment had shown affection for her and that, while waiting at the canteen for the works truck to take her and the other employees home, she had embraced him to an extent which produced sexual excitement, and that their conduct had led to jests by fellow employees. After hearing this conversation, the husband withdrew from cohabitation. On a complaint by the wife that he had deserted her the husband alleged that he honestly and reasonably believed that she had committed adultery. The justices accepted his evidence and dismissed the complaint:—*Held*, the husband was guilty of desertion since, as he had no evidence of opportunity for his wife to commit adultery, his belief in her adultery was not founded on reasonable grounds. (Cox *v.* Cox. P.D. & A.)... 173

3. Maintenance order; application to vary; order for discharge; revival of discharged or revoked order; Magistrates' Courts Act, 1952, s. 45 (2), s. 53.—The parties were married in 1950. They separated in February, 1952, and on May 3, 1952, an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949 was made in the wife's favour on the ground that the husband had been guilty of wilful neglect to provide reasonable maintenance for her the husband being ordered to pay her £2 a week as maintenance. On May 28, 1957, the wife was granted a decree absolute of divorce on the ground of the husband's adultery. The wife did not apply for maintenance in her divorce proceedings. On September 27, 1957, the husband applied by complaint to the justices to vary the order of May 3, 1952, by reducing the amount of maintenance on the grounds that his means were reduced, that the wife's means were sufficient without the weekly sum of £2, and that the parties had been divorced. The justices revoked the order of May 3, 1952, and in their reasons stated, *inter alia*, that, if the wife's circumstances deteriorated, she could apply again to the court. On appeal by the wife:—*Held*, the justices had no jurisdiction to revoke, which was equivalent to discharge, the order of May 3, 1952, since the husband's complaint was merely to vary that order; but in the circumstances the wife was entitled only to a nominal sum by way of maintenance. Observations on the question whether an order which has been revoked or discharged can subsequently be revived under the Magistrates' Courts Act, 1952, s. 53. (Bowen *v.* Bowen. P.D. & A.) 202

4. Maintenance order; discharge; adultery; "fresh" evidence; husband unaware of wife's adultery at date of order; lapse of time for appeal; Summary Jurisdiction (Married Women) Act, 1895, s. 7.—Where a husband against whom an order has been made under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, discovers after the time for appeal has elapsed that the wife had committed adultery before the date of the order, he can apply to the justices under s. 7 of the Act of 1895 to discharge the order on the ground that the adultery constitutes "fresh evidence". *Semble:* he can also apply to the Divisional Court for leave to appeal out of time against the order. (Newman *v.* Newman. P.D. & A.) 42

I

INFANTS PAGE

Custody; order of justices; order involving transfer of infant from mother to father; application of mother for stay pending appeal; proper course for justices to adopt.—The infant was under five years old and had always lived with its mother. The parents were married, but at Easter, 1956, they had separated. The infant continued to live with the mother, but the father saw the infant at fortnightly intervals for about one year thereafter. On the father's application the justices, on February 24, 1958, committed the legal custody of the infant to the father and granted the mother right of limited access. Counsel for the mother applied for a stay of the order pending an appeal, but the justices refused to grant a stay and gave no reason for so doing. The father then attempted to take the infant from the mother, but she refused and the infant remained with her. Notice of appeal by the mother against the order was served on February 25, 1958. Next day the mother applied *ex parte* to the Chancery Division and it was then ordered that the infant should remain in her custody until February 28, 1958, or until further order in the meantime, and liberty to serve notice of motion for that date was granted. On the hearing of the motion:—*Held*, (i) where justices are satisfied that there is a genuine intention to appeal from an order made by them transferring an infant from one parent to another and there is no urgency for the transfer it is not normally in the interests of the infant to refuse a reasonable stay pending the appeal; (ii) where the justices consider that such a stay ought to be refused, unless there is a greater sense of urgency, the order should be made to take effect after a few days to allow the party aggrieved to apply to the High Court; (iii) there being no sense of urgency in the present case, a stay would be granted and the infant would remain in the custody of the mother until the hearing of the appeal. (*Re* S. (an infant). Ch.D.) 245

J

JUSTICES

1. Institution of prosecution; consent of Minister required; duty of clerk to justices and justice issuing summons; position of prosecution when objection with regard to consent taken; when justices should allow case to be re-opened; National Insurance Act, 1946, s. 53 (1).—The respondent was charged with offences under the National Insurance Act, 1946. By s. 53 (1) of the Act proceedings for an offence under the Act are not to be instituted except by or with the consent of the Minister of Pensions and National Insurance or by an inspector or other officer authorized in their behalf. The prosecution did not prove that consent or authority at the trial, and after the prosecution's case had been closed it was submitted that the respondent had no case to answer because the prosecution had not proved the consent or authority and evidence of it could not be admitted at that stage: —*Held*, it was the duty of the clerk to the justices and the justice who issued the summons to see that s. 53 (1) had been complied with; in the absence of objection taken by the defence before the prosecution closed their case that the requisite consent or authority had not been proved, the justices should have acted on the presumption that the duty had been discharged; the objection having been taken at a later stage, and being one of technicality, going only to procedure, the justices should have allowed the prosecution to re-open the case; and the case must be remitted to them with a direction to proceed with the hearing. R. *v.* Waller (1910) 74 J.P. 81, applied. *Per*

JUSTICES—*continued* PAGE

LORD GODDARD, C.J.: there is a distinction between an objection that goes to the merits of the case and one which goes only to procedure. If an objection goes to the merits, the justices should be very careful about allowing the case to be re-opened where the prosecution have failed to prove something, but they should not allow a technical objection relating to procedure, where that has been held back until the last moment, to prevail. R. *v.* Day (1940) 104 J.P. 181; [1940] 1 All E.R. 402 distinguished. (Price *v.* Humphries. Q.B.D.) 423

2. Offence triable summarily or on indictment; application by prosecutor for summary trial; application by conduct sufficient; Magistrates' Courts Act, 1952, s. 18 (1).—Section 18 of the Magistrates' Courts Act, 1952, provides: "(1) Where an information charges any person with an offence that is by virtue of any enactment both an indictable offence and a summary offence, the magistrates' court dealing with the information shall . . . proceed as if the offence were not a summary offence, unless the court, having jurisdiction to try the information summarily, determines on the application of the prosecutor to do so. (2) An application under the preceding sub-section shall be made before any evidence is called . . ." An application by a prosecutor under s. 18 (1) for summary trial may be made either expressly or by conduct. A defendant pleaded guilty at a magistrate's court to taking and driving away a motor vehicle without the consent of the owner, contrary to s. 28 of the Road Traffic Act, 1930, an offence which could be tried either summarily or on indictment. After a police officer had given evidence of antecedents, the defendant's counsel addressed the magistrate in mitigation, and the magistrate then passed sentence. At no time during the hearing did the prosecution formally apply for summary trial:—*Held*, that, by their conduct in proceeding with the case, the prosecution had made an application for summary trial sufficient to satisfy the requirements of s. 18 (1), and *certiorari* would not issue to quash the sentence on the ground that the magistrate had no jurisdiction to try the case summarily. James *v.* Bowkett (1952) 116 J.P. 445, applied. (*Ex parte* Rigby. Q.B.D.) 427

3. Summary trial or committal for trial; election by defence for summary trial; opening of case; decision of magistrate to commit; no evidence heard; Magistrates' Courts Act, 1952, s. 24.—A magistrate does not begin to try an indictable offence summarily within the meaning of s. 24 of the Magistrates' Courts Act, 1952, until he begins to hear evidence. Where, therefore, in accordance with the wishes of the prosecution and defence a magistrate agreed to proceed with a view to the summary trial of an indictable offence, but, after hearing the opening of the prosecution, said that he would not try the case summarily and committed the defendants for trial:—*Held*, that as the magistrate had decided to commit for trial before he heard any evidence, he was entitled to change his mind at that stage of the proceedings and the committal for trial was valid. (R. *v.* Ibrahim and Others. C.C.A.) 119

4. Warrant; indorsement; signed form pinned to warrant; validity; Indictable Offences Act, 1848, s. 12, as amended by Magistrates' Courts Act, 1952, sch. V.—A magistrate, who was purporting to authorize the execution of a warrant within his jurisdiction signed a form of indorsement and the signed form was then pinned to the warrant:—*Held*, that the magistrate did not "make an indorsement

JUSTICES—*continued* PAGE

on the warrant signed with his name", as required by s. 12 of the Indictable Offences Act, 1848 (as amended), and that the purported indorsement was invalid. (R. *v.* Metropolitan Police Commissioner. *Ex parte* Melia. Q.B.D.) 23

L

LANDLORD AND TENANT

New tenancy; business premises; land let with buildings; landlord local authority; intention of local authority to demolish buildings and let land as smallholding.—By a tenancy agreement, dated April 30, 1953, a county council let to the tenant land comprizing 229 acres for one year certain and thereafter from year to year at a rent of £52 *per annum*. On the land there were some buildings in the nature of a Nissen hut and sheds which the tenant covenanted to keep in good repair and to remove if required to do so. The tenant conducted on the land the business of a repairer of motor cars and agricultural implements. After having received notice to quit the tenant applied for a new tenancy under part 2 of the Landlord and Tenant Act, 1954, and the county council opposed the grant on the ground, under s. 30 (1) (*f*) of the Act, that on the termination of the tenancy they intended to demolish the premises comprized in the holding. It was proved that the council proposed to let the land, when they had recovered it, to an agricultural tenant:—*Held*, the tenant was not entitled to a new tenancy because the intention of the council to recover the land was established, and that intention was not vitiated by the fact that the main purpose was to incorporate the land into another tenant's agricultural holding. (Craddock *v.* Hampshire County Council. C.A.) 148

LICENSING

Gaming on licensed premises; lawful lottery; effect of exemption from illegality under Betting and Lotteries Act, 1934; Licensing Act, 1953, s. 141 (1); Small Lotteries & Gaming Act, 1956, s. 1.—The licensee of a public house was also president of a club registered under the Small Lotteries & Gaming Act, 1956. With the knowledge and approval of the licensee, a small lottery was conducted on behalf of the club on the licensed premises in a manner complying with s. 1 of the Act, and the lottery, accordingly, was not an illegal lottery. Tickets were sold at sixpence each, the purchaser selecting two numbers between one and twenty, and subsequently a draw was made by placing in a canister balls numbered from one to twenty, revolving the canister, and then releasing two balls. The ticket holder whose number corresponded to those on the released balls was entitled to a prize. The licensee was convicted of suffering gaming to be carried on on licensed premises, contrary to s. 141 of the Licensing Act, 1953, and two officers of the club were convicted of aiding and abetting the licensee:—*Held*, that the convictions were right because (*per* LORD GODDARD, C.J.) participating in any lottery was gaming, and (*per* DONOVAN and ASHWORTH, JJ.) participating in the particular lottery in question amounted to gaming, and the Small Lotteries & Gaming Act, 1956, did not create any exemption from liability under s. 141 of the Licensing Act, 1953. *Per* DONOVAN and ASHWORTH, JJ.: The defence provided by s. 22 (2) of the Betting and Lotteries Act, 1934, is available in the case of a lottery exempted from illegality by s. 1 or s. 4 of the Act of 1956. (Smith and Others *v.* Wiles. Q.B.D.) ... 468

LOCAL GOVERNMENT PAGE

1. Employment of staff; appointment by committee; power of council to delegate functions to committee.—By the London Government Act, 1939, s. 59 (1), a local authority might appoint committees to deal with any purpose which the authority considered would be better regulated and managed by means of a committee, and by s. 67 (1) the authority might delegate such functions as they thought fit to committees. By the defendants' standing orders dealing with the works committee, that committee was to "be responsible for . . . appointment and management of staff of borough engineer's department . . . ", and in other standing orders other committees were made responsible for various functions of the defendants. On June 12, 1957, the works committee, purporting to act on behalf of the defendants, entered into a contract with the plaintiff to employ him in the borough engineer's department as assistant road superintendent. The defendants contended that the works committee had no power to enter into such a contract because the appointment of staff to the borough engineer's department had not been expressly delegated to the committee:—*Held*, the standing order conferred power on the works committee to appoint staff to the borough engineer's department, and their power was not subject to confirmation by the defendants; therefore, the defendants were not entitled to repudiate the contract made by the works committee with the plaintiff. (Battelley *v.* Finsbury Borough Council. Q.B.D.) 169

2. Transport undertaking; free travel; concessions for aged persons; undertaking operating in area of another council; "cost incurred . . . in . . . granting . . . travel concessions" in that area; basis of calculation; Public Service Vehicles (Travel Concessions) Act, 1955, s. 1 (4).—The defendant corporation operated a transport undertaking in certain local government areas, including that of the plaintiff council. Under the Public Service Vehicles (Travel Concessions) Act, 1955, s. 1 (1), the defendant corporation granted free travel concessions to old people and certain other "qualified persons" as defined in s. 1 (2) of the Act, and a certificate of the appropriate licensing authority defining the nature and extent of the travel concessions had been obtained under s. 1 (3) of the Act. The persons who qualified for the concessions were issued with passes and were allowed free travel during the permitted hours. By s. 1 (4) of the Act the council in whose area another local authority ran public service vehicles might contribute to any "cost incurred . . . in . . . granting . . . travel concessions" in that area. On the question of the basis on which such "cost incurred" was to be calculated:—*Held*, by dividing the total expenditure of the undertaking for the year by the total number of journeys made by fare-paying passengers and pass-holders it was possible to calculate the share of the total cost of the undertaking attributable to each passenger journey whether made by a fare-paying passenger or a pass-holder, and this was the basis on which the "cost incurred" was to be calculated so as to arrive at the sum to which the plaintiff council was, by s. 1 (4) of the Act, permitted to contribute. (Litherland Urban District Council *v.* Liverpool Corporation and Another. Ch.D.) 337

M

MENTAL DEFECTIVE

Detention order by magistrate; jurisdiction to make order if "satisfied on medical evidence" offender was defective; evidence by prison doctor that offender feeble-minded person; consent of parent or

MENTAL DEFECTIVE—*continued* PAGE

guardian not required; Mental Deficiency Act, 1913, s. 8 (1) (*b*).—A youth was convicted of larceny and placed on probation. He was brought before a magistrates' court to answer an allegation that he had committed a breach of the order and was remanded by the magistrates for medical examination. He was at the time aged twenty. The prison doctor, who was well acquainted with the Mental Deficiency Acts, examined the youth and at the adjourned hearing gave evidence before the magistrates that the youth was a feeble-minded person within s. 1 (1) (*c*) of the Act of 1913. By s. 8 (1) (*b*) of that Act the magistrates were empowered to make an order committing the youth to an institution for mental defectives if they were "satisfied on medical evidence" that he was a defective within the meaning of the Act. Having heard the evidence of the prison doctor, they made such an order, the consent of the youth's parent or guardian not being obtained. On application for *habeas corpus*:—*Held*, that the magistrates had jurisdiction to make the order, the evidence of the prison doctor, coupled with their own observation of the youth, being sufficient to give them jurisdiction; that the consent of a parent or guardian was not required for an order made in these terms; and, therefore, that the application for *habeas corpus* must be refused. (*Re* Sage. Q.B.D.) 154

MINES

Coal mine; breach of statutory duty; duty to make secure sides of "working place"; fall of coal from coal face; Coal Mines Act, 1911, s. 49.—The plaintiff was employed by the National Coal Board as an underground worker in one of their coal mines. On December 2, 1955, when he was working on a coal face, he was directed to go along the coal face and help "filling off" coal. When he had gone some fifty yards along the coal face a large piece of coal came from the side of a working face, and injured him. In an action for damages against the Board the plaintiff alleged that the Board was in breach of its statutory duty under s. 49 of the Coal Mines Act, 1911, in that it failed to make secure the roof and the sides of every working face:—*Held* (MORRIS, L.J., dissenting), the obligation imposed by s. 49 of the Act of 1911 to make secure the sides of any working place did not extend to a coal face, and, therefore, the Board was not guilty of a breach of duty under that section. (Gough *v.* National Coal Board. C.A.) 249

N

NEGLIGENCE

Public lavatory; plaintiff shut in cubicle owing to defective lock; no attendant present; plaintiff injured while attempting to escape.—The defendants, a local authority, owned and operated a public lavatory. The plaintiff, who, with her husband, had arranged to catch a bus which was due at a bus stop nearby 20 minutes later, entered the public lavatory and paid for admission to a cubicle by putting a penny in the slot provided for the purpose. Having closed the door of the cubicle she found that she was unable to re-open it as the inside handle was missing. There was no warning notice outside the cubicle, and there was no attendant at the lavatory. Having tried unsuccessfully to operate the lock, the plaintiff tried, also unsuccessfully, to put her hand through a window to attract attention. She then banged on the door and shouted, but no one came. After some 10 or 15 minutes, she decided to see whether it would be possible for her to climb out through the space between the top of the door

NEGLIGENCE—*continued* PAGE

and the ceiling, and, in order to do so, she stood with her left foot on the seat of the lavatory and rested her right foot on the toilet roll and fixture, holding the pipe from the lavatory cistern with one hand and resting the other hand on the top of the door. Finding that it would be impossible to get out over the door, she proceeded to come down, and, as she was doing so, the toilet roll rotated, owing to her weight on it, and upset her balance, so that she fell to the ground and was injured. In an action by the plaintiff for damages against the defendants, the defendants were found to have been negligent, but the action was dismissed on the ground that the plaintiff chose to embark on a dangerous manoeuvre and must bear the consequences of her action. On appeal:—*Held*, in all the circumstances of the case the plaintiff had not acted unreasonably, and, therefore, the damage was not too remote; she could, however, not be completely absolved from some measure of fault and ought to recover only three-fourths of the damage which would have to be assessed. (Sayers *v.* Harlow Urban District Council. C.A.) 351

O

OATHS

Trial; oath; affirmation; conditions precedent to affirmation; Sikh affirming owing to impracticability of administering oath according to his religion; "lawfully sworn"; Oaths Act, 1888, s. 1; Perjury Act, 1911, s. 1 (1), s. 15 (2).—The defendant, a Sikh, had been a witness in proceedings against another person in a magistrates' court. According to the defendant's religion, the Sikh faith, an oath sworn on the "Granth", the holy book of the Sikhs, would have been binding on the defendant, but, as no copy of the "Granth" was available in the magistrates' court, it was impracticable to administer an oath to the defendant in accordance with his religion and he made an affirmation before giving his evidence. The defendant had not objected to taking the oath according to his religion. He was later charged with having committed perjury in the proceedings in the magistrates' court:—*Held*, the defendant was not "lawfully sworn", within s. 1 (1) of the Perjury Act, 1911, in the magistrates' court, because, under s. 1 of the Oaths Act, 1888, a person was permitted to make a solemn affirmation instead of taking an oath only if he objected to taking an oath on one of the two grounds provided by that section, and, therefore, there was no case to go to the jury on the charge of perjury. (R. *v.* Pritam Singh. Leeds Asz.) 85

P

PUBLIC HEALTH

Nuisance; statutory nuisance; black smoke from chimney; hospital premises; hospital under National Health Service scheme; "premises occupied for the public service of the Crown"; no jurisdiction in justices to hear complaint; Public Health Act, 1936, s. 106.—A complaint was preferred at a magistrates' court against the appellants, a hospital management committee, alleging that on July 12, 1955, a notice under the provisions of the Public Health Act, 1936, to abate a nuisance arising at the hospital (which had been transferred to the Minister of Health under the National Health Service Act, 1946) from a chimney emitting black smoke in such quantity as to be a nuisance was served on the appellants, being the persons by whose default the nuisance arose, and that the appellants had made

PUBLIC HEALTH—*continued* PAGE

default in complying with the requirements of the notice. Objection was taken on behalf of the appellants before the justices that they had no jurisdiction to entertain the complaint by reason of s. 106 of the Public Health Act, 1936, it being submitted that the hospital premises were "premises occupied for the public service of the Crown". The justices overruled the objection, held that they had jurisdiction, and made an order that the appellants should within four calendar months of the service upon them of the order or a copy thereof execute all works necessary to abate the nuisance. On appeal to the Divisional Court:—*Held*, that the hospital premises were such as were required and created by statute, and, being provided under the National Health Service Act, 1946, were provided for the public service of the Crown; and, therefore, they were "premises occupied for the public service of the Crown" within the meaning of s. 106 of the Public Health Act, 1936, and the justices had no jurisdiction to hear the complaint. *Dictum* of LORD WESTBURY in Mersey Docks *v.* Cameron (1865) 11 H.L. Cas. 443, 504, applied. (Nottingham Area No. 1 Hospital Management Committee *v.* Owen. Q.B.D.) 5

R

RATING AND VALUATION

1. De-rating; industrial hereditament; slaughterhouse; "adapting for sale of any article"; Rating and Valuation (Apportionment) Act, 1928, s. 3 (1).—By s. 3 (1) of the Rating and Valuation (Apportionment) Act, 1928, it is provided: "the expression 'industrial hereditament' means a hereditament . . . occupied and used as a factory or workshop," and, further, that the expressions "factory" and "workshop" have respectively the same meaning as in the Factory and Workshop Acts, 1901 to 1920. Section 149 (1) (*c*) (iii) of the Act of 1901 includes as a factory any premises where manual labour is exercised by way of trade and used for the purpose of "adapting for sale any article." The hereditament in question was a slaughterhouse, and the tribunal held that the operations conducted there amounted to the adaptation of articles for sale, but decided that the factories legislation was not intended to apply to slaughterhouses which should be treated as exclusively governed by their own special code:—*Held*, the slaughterhouse legislation from 1847 to 1954, although forming a code, did not exclude the application of the Factory and Workshop Act, 1901, and, therefore, the ratepayers were entitled to the de-rating privilege which they sought. (Fatstock Marketing Corporation, Ltd. *v.* Morgan (Valuation Officer). C.A.) 211

2. De-rating; industrial hereditament; whole premises used for maintenance of road vehicles; Rating and Valuation (Apportionment) Act, 1928 s. 3 (1), (2).—The appellants occupied a depôt for work on their omnibuses, each omnibus being completely overhauled every three and a half years. On the question whether the depôt was an industrial hereditament for rating purposes within s. 3 (1) of the Rating and Valuation (Apportionment) Act, 1928, or was excepted from that definition by s. 3 (2) as being a "place used . . . for the . . . maintenance of" the appellant's vehicles:—*Held* (LORD DENNING dissenting), the word "maintenance" in s. 3 (2) included the overhauling and re-conditioning of the vehicles carried out in the present case; the exception in s. 3 (2) of "any place used . . . for the . . . maintenance of" road vehicles applied where the place so used was the whole of the hereditament (as in the present case) as well as where it was

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merely a part of the hereditament, and, therefore, the depôt was not an industrial hereditament within the meaning of s. 3 of the Act. (London Transport Executive *v.* Betts (Valuation Officer). H.L.) ... 380

3. Limitation of rates chargeable; friendly society; society not established or conducted for profit; benefits payable to non-members; not organization whose "main objects are charitable or otherwise concerned with the advancement of . . . social welfare"; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1).—The ratepayers were a registered friendly society which had about 600,000 members and large assets. Its rules provided for payments of benefits to members and their families. Benefits were calculated and paid on an actuarial basis, but the society had discretionary power to pay a benefit to a member not otherwise entitled to receive it. The society's income was mainly derived from the contributions of the members and accumulated funds, a relatively small amount being received from other sources which included donations. The society was not established or conducted for profit. On the question whether the rates on a hereditament occupied by the society should be limited pursuant to s. 8 (2) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, the Divisional Court decided that the society was not an organization whose objects were charitable or otherwise concerned with the advancement of social welfare within s. 8 (1) (*a*). On appeal:—*Held*, looking at all the main objects of the society as a whole, it could not be said that all its main objects were concerned with, *i.e.*, directed to, the advancement of social welfare, and, therefore, the appeal failed. Decision of Divisional Court (122 J.P. 1) affirmed. (Independent Order of Oddfellows Manchester Unity Friendly Society *v.* Manchester Corporation. C.A.) 493

4. Limitation of rates chargeable; hereditament occupied for the purposes of a non-profit making organization; notice terminating the limitation of rates chargeable; when notice may be given; rate made for second rating year before end of first year; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (3).—The city council was the rating authority for the district and the defendants long before April 1, 1956, had been and still were the owners and occupiers of King's College, to which premises (for the most part) the Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8, applied. The new valuation list for the first year, as defined in s. 8 (2) of that Act, came into force on April 1, 1956, and the defendants were allowed in respect of that year the reliefs provided for by s. 8 (2) (*a*). As from the commencement of the first year of the new list the defendants became entitled in regard to subsequent years to the reliefs provided for by s. 8 (2) (*b*), and before February 1, 1957, it was the statutory duty of the council to consider the rate to be made for the second rating year (April 1, 1957, to March 31, 1958). On March 14, 1957, a resolution was passed at a meeting of the council which approved the actual rate payable for the second rating year. By notice dated March 27, 1957, and served by post on the defendants on March 28, 1957, the council gave notice pursuant to s. 8 (3) of the Act that as from the end of the year ending March 31, 1960, the limitation imposed by s. 8 (2) (*b*) of the amount of rates chargeable in respect of the premises would cease to apply. The defendants disputed the validity of the notice on the ground that it was served before the end of the first year of the new list on March 31, 1957:—*Held*, the notice under s. 8 (3) served on March 28, 1957, was not premature, and,

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therefore, it was valid. (Westminster City Council *v.* King's College, University of London. Ch.D.) 428

5. Limitation of rates chargeable; organization concerned with the advancement of education; notice terminating the limitation; time for service; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (3).—The ratepayers were an organization to which s. 8 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, applied. On March 21, 1956, notices dated March 20, 1956, were served by the borough council on the ratepayers under s. 8 (3) of the Act informing them that as from March 31, 1959, *i.e.*, after three years, the privileges conferred on them as ratepayers by s. 8 (2) (*b*) of the Act would cease to apply to their hereditaments. The first year of the new valuation list began on April 1, 1956, and ended on March 31, 1957. On the question whether the notices were ineffective on the ground that they could not be validly served until a year subsequent to the first year of the new valuation list:—*Held*, no notice under s. 8 (3) of the Act of 1955 could be served until after the fulfilment of the condition in para. (*b*) of subs. (2), *i.e.*, after the expiration of the first year of the new valuation list, and, accordingly, the notices were prematurely served and invalid. (St. Pancras Borough Council *v.* London University. C.A.) 55

6. Plant and machinery; automatic oven in bakery; separate rateability of moveable parts; Plant and Machinery (Valuation for Rating) Order, 1927 (S.R. & O. 1927, No. 480), sch., class 4.—The ratepayers carried on a bakery business in which they used certain apparatus, known as "60 tray uniflow ovens." By a system of an endless belt to which 60 trays were attached, loaves could pass through the oven, having remained subjected to the oven's heat for a sufficient time to convert them into bread of the required consistency. The weight of an oven was 45 *tons* of which 9 *tons* were attributable to moving parts. The question for the court was whether the moveable parts were rateable by reason of the provisions of class 4 of the schedule to the Plant and Machinery (Valuation for Rating) Order, 1927, which provided that certain plants or parts of plants were rateable, but "only to such extent as it is in the nature of a building or structure." The Lands Tribunal, after viewing the apparatus, decided that the moveable parts were not rateable. On appeal:—*Held*, the question whether the oven was as to all its mechanism in the nature of a structure, or whether part of it was structural and some part not, was a question of fact for the tribunal, and, as there was no misdirection, the court could not interfere. (W. Collier, Ltd. *v.* Fielding (Valuation Officer). C.A.) 222

7. Plant and machinery; underground petrol tank of petrol station; Plant and Machinery (Valuation for Rating) Order, 1927 (S.R. & O. 1927, No. 480), sch., class 4.—The hereditament was an underground petrol tank under the petrol pumps of a petrol station. It consisted of a metal container of a capacity of 3,000 *gallons* resting on a concrete base with side walls of brickwork, the space between the walls and the container being filled with dry sand. Tanks were "plant" enumerated in class 4 of the schedule to the Plant and Machinery (Valuation for Rating) Order, 1927. The Lands Tribunal decided that the tank did not form part of the hereditament. On appeal:—*Held*, the tank was not a piece of plant put into a building for convenience, but the housing formed an essential part of the plant, and,

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therefore, the whole plant was rateable. (Shell-Mex and B.P., Ltd. *v.* Holyoak (Valuation Officer). C.A.) 229

8. Relief; charitable organization; "conducted for profit"; trust for provision of workmen's dwellings; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*):—A trust claimed relief from rating for its hereditaments on the ground that it was an organization whose main objects were charitable (which was not disputed) and which was "not established or conducted for profit" within the meaning of s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955. Clause 1 (B) of the trust deed provided: ". . . it is the intention of the founder that the original capital of the fund should, by expenditure on objects of a permanent character retaining a fair low rate of interest . . . be kept intact and go on increasing, so that . . . the purpose to be kept in view may be assistance to individuals to improve their condition, without placing them in the position of being the recipients of a bounty." Quarter sessions held that the trust was entitled to the relief claimed. On appeal by the rating authority:—*Held*, that, although the trust was not established for profit, it was conducted for profit because it sought an accumulation of funds which would enable the trustees to invest in other buildings and thus increase the benevolent objects of the settlor; if profit was being made, the rating authority did not have to consider what was done with the profit or whether it was used for charitable or other purposes; and, therefore, the trust was not entitled to the benefit of s. 8. (Guinness Trust (London Fund) Founded 1890 Registered 1902 *v.* West Ham Corporation. Q.B.D.) ... 317

9. Relief; convalescent home of friendly society; non-profit making organization; "main objects charitable or . . . otherwise concerned with advancement of social welfare"; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—The trustees of a registered friendly society conducted mutual insurance among the members and occupied for the purposes of the society a convalescent home. In the course of their insurance activities, the society accumulated considerable reserves in the form of investments, securities and land. By the rules of the society a person could become a member if he satisfied certain conditions, and, as a member, he was entitled to certain benefits dependent on the contributions he paid, the benefits being determined in accordance with the society's rules and calculated on an actuarial basis. The rating authority having demanded payment of rates in respect of the convalescent home, the trustees of the society claimed limitation of rates under the Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*), on the ground that the society was an organization which was not established or conducted for profit and whose main objects were concerned with the advancement of social welfare. It was conceded that the main objects of the society were not charitable nor otherwise concerned with the advancement of religion or education within s. 8 (1) (*a*):—*Held*, the society was not entitled to the limitation of rates claimed because, although it was not an organization established or conducted for profit within the meaning of s. 8 (1) (*a*) since its object was not to make profits despite the existence of very large investments, but to provide security for its members, yet there was no element of public interest and the society was only concerned with the promotion of the private interests of members admitted on a selective basis, and, therefore, the society was not an organization whose main objects

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were concerned with the " advancement " of social welfare within the meaning of s. 8 (1) (*a*). (Trustees of the National Deposit Friendly Society *v.* Skegness Urban District Council. H.L.) 399

10. Relief; hereditament previously exempted from rating as occupied by scientific society; new valuation list; no " total amount of rates charged " previously; no right to reduction of present rate to nil; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (2) (*a*).—Before the coming into force of the new valuation list on April 1, 1956, a hereditament occupied by the appellants was wholly exempt from rates under the Scientific Societies Act, 1843. For the first year of the new list the appellants, who, it was assumed, were no longer exempt under the Act of 1843, were charged with a rate amounting to £187 15*s.* 6*d.* The appellants were an organization within s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, since they were not established or conducted for profit and their main objects were charitable or concerned with the advancement of education and social welfare. They appealed against the rate charged, contending that it exceeded the amount provided by s. 8 (2) and that it should be reduced to nil:—*Held*, that s. 8 (2) (*a*) had no application, because, where no rates had been charged, there was no " total amount of rates " charged with which comparison could be made, and the appellants were not entitled to relief. (Horace Plunkett Foundation *v.* St. Pancras Borough Council. Q.B.D.) ... 79

11. Relief; meaning of " organization . . . concerned with the advancement of . . . social welfare "; General Nursing Council for England and Wales; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—The General Nursing Council for England and Wales was originally formed under the repealed Nurses Registration Act, 1919, and is now regulated by the Nurses Act, 1957. Under the provisions of that Act the purposes and functions of the council are to maintain a register of nurses and a roll of assistant nurses, to regulate the admission to and removal from the register and the roll, and to exercise supervisory and directing powers in regard to training and examination. Penalties were provided for the false assumption of the title of registered or enrolled nurse, and restrictions were provided on the use of the title of nurse and assistant nurse. It was common ground that the council was not established or conducted for profit. The question was whether the council was an organization the main objects of which were concerned with the advancement of social welfare within s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955:—*Held*, the main objects of the council were the enhancement of the qualities and status of nurses and the benefit and protection of the public particularly of the sick, which achievements were essentially inseparable, but the improvement in quality and prestige of the nursing profession was not an object concerned with social welfare within the meaning of s. 8 (1) (*a*) of the Act of 1955, and, therefore, the council was not entitled to the relief thereunder. *Per Curiam*: The advancement of social welfare ought not to be equated with the promotion, generally, of the well-being, in every sense and of every kind, of society or sections of society. Everything which can be shown to tend to the public advantage cannot for the purpose of s. 8 (1) (*a*) of the Act of 1955 be treated as concerned with the advancement of social welfare. (General Nursing Council for England and Wales *v.* St. Marylebone Corporation. C.A.) 67

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12. Relief; organization concerned with advancement of religion, education or social welfare; Theosophical Society in England; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*). Evidence; rating; limitation of rates chargeable; charitable organization; main objects; construction of written constitution; meaning attached by members; activities of organization; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—The Theosophical Society in England was a component national society of an international society, incorporated under the laws of India; it was not established or conducted for profit. Its first main object as set out in its memorandum of association was " to form a nucleus of the universal brotherhood of humanity without distinction of race, creed, sex, caste or colour ". Evidence was filed on behalf of the society with an explanation of theosophy and of what theosophists believed, the meaning which they attributed to their main objects, and the past and present activities of the society. The meaning of the first main object was explained as follows: " To form an ever expanding group of persons who are aware of the universal brotherhood of man which is implied by the Fatherhood of God and who believe in working for the diminution and final abolition of all intolerance and discrimination relating to race, creed, sex, social class and colour". On the question whether the society was an organization the main objects of which were concerned with the advancement of religion, education or social welfare within s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955:—*Held*, (i) in order to ascertain for the purpose of s. 8 (1) (*a*) of the Act of 1955 the main objects of an organization with a written constitution, resort should normally be had to its constitution alone unless some word or phrase had in relation to the organization a special meaning; evidence of how members explained the meaning of their objects was inadmissible; and evidence of the activities of an organization was only relevant on an inquiry as to its main objects; (ii) at least one of the main objects of the society was neither charitable nor concerned with the advancement of religion, education, or social welfare, for it was concerned also with many other matters as well, and, therefore, the society was not an organization to which s. 8 (1) (*a*) applied. (Berry *v.* St. Marylebone Corporation. C.A.) 59

13. Relief; organization concerned with advancement of social welfare; mine workers' holiday camp; compulsory contributions levied under statute; element of benevolence; class sufficiently wide; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—The ratepayers were the trustees of a holiday camp and ancillary premises which they occupied for the purpose of providing " a holiday centre and a recreation or pleasure ground for the benefit of workers in or about coal mines employed by collieries in the Derbyshire district," including the workers' dependants and guests. The camp was established under a fund raised by compulsory contributions levied under certain Acts. The taxpayers were responsible for maintenance and operational expenses in connexion with the camp, but received grants to cover capital expenditure from a social welfare organization set up under statute. The ratepayers paid less than a rack rent for the premises, they did not seek to make a profit, and they did not make a loss on their operations. The employees of collieries benefiting under the trust were all now employed by the National Coal Board. The question for the court was whether the ratepayers were an organization whose main objects were " concerned with the ad-

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vancement of social welfare " within the meaning of s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, so as to entitle them to have their rate limited to the amount levied in the previous year under s. 8 (2):—*Held*, the ratepayers were entitled to the relief claimed because the object of providing a holiday camp of the kind in question was " concerned with the advancement of social welfare " and the coalminers benefiting constituted a sufficiently large and important section of the community for the purpose of s. 8 (1) (*a*) of the Act. (Derbyshire Miners' Welfare Committee *v.* Skegness U.D.C. C.A.) 74

14. Relief; organization whose main objects are charitable; Royal College of Nursing; promotion of the " advance of nursing as a profession "; incidental benefits to individual nurses; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—Article II (B) of the amended charter of the Royal College of Nursing stated, as its main objects: " to promote . . . the purposes hereinafter set out and in particular (*a*) to promote the science and art of nursing and the better education and training of nurses and their efficiency in the profession of nursing; (*b*) to promote the advance of nursing as a profession in all or any of its branches . . ." It was conceded that object (*a*) was charitable. The college, the activities of which included giving full-time education in the art and science of nursing, claimed limitation of rates under s. 8 (2) of the Rating and Valuation Act, 1955, on the ground that they were " an organization whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare " within the meaning of s. 8 (1) (*a*). The claim having been rejected by the rating authority, the college appealed to quarter sessions who allowed their appeal, and, on the case being sent back to them by the Divisional Court for further findings, found that the objects in art. II (B) (*a*) and (*b*) were mutually complementary in that both were directed to a single end, namely, the raising of the standard of nursing for the benefit of the community rather than the promotion of the professional interests of nurses as an end in itself. On appeal to the Divisional Court:—*Held*, that the words " advance of nursing as a profession " in art. II (B) (*b*) were directed to the advancement of nursing and not to the advancement of the professional interests of nurses; the second main object of the college was, therefore, charitable; and the college was entitled to the relief claimed. General Nursing Council for England and Wales *v.* St. Marylebone Corpn. (*ante*, p. 67), distinguished. (Royal College of Nursing *v.* St. Marylebone Corporation. Q.B.D.) ... 88

15. Relief; organization whose main objects are concerned with advancement of social welfare; friendly society; society not established or conducted for profit; insurance and other benefits payable to members and non-members; Rating and Valuation (Miscellaneous Provisions) Act, s. 8 (1) (*a*).—The income of a friendly society was derived, in the main, from members' contributions and investment funds, and, to a lesser extent, from fines, donations and levies. The society was not established or conducted for profit. Its objects, as set out in one of its rules, were to provide for the payment of insurance and other benefits to members, the benefits being calculated on an actuarial basis, though in certain cases the society had a discretionary power to pay a benefit to a member not otherwise entitled to it, and a member who was in default with contributions might still receive a benefit. Provision was made also for payments for

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the relief and benefit of certain non-members—in substance, the families of members. The society claimed relief from rates under s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, in respect of a hereditament occupied by it as its head and registered office, on the ground that the society was an organization whose main objects were charitable or otherwise connected with the advancement of social welfare:—*Held*, that the society did not come within the provisions of the sub-section entitling it to relief as its main objects were not the advancement of social welfare, but the carrying into effect of a mutual insurance business. Trustees of the National Deposit Friendly Society *v.* Skegness Urban District Council (1957) 121 J.P. 567, applied. (Independent Order of Oddfellows Manchester Unity Friendly Society *v.* Manchester Corporation. Q.B.D.) ... 1

16. Relief; sports ground; ground owned by company; maintenance for benefit of employees; benefit derived by company; remoteness; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*c*). —Section 8 (1) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, provides as follows: " This section applies to the following hereditaments, that is to say . . . (*c*) any hereditament consisting of a playing field (that is to say, land used mainly or exclusively for the purposes of open-air games or of open-air athletic sports) occupied for the purposes of a club, society or other organization, which is not established or conducted for profit and does not (except on special occasions) make any charge for the admission of spectators to the playing field . . . " An insurance company were the owners and occupiers of a sports ground containing several playing fields and a pavilion. The ground was used solely for open-air games, refreshments being available in the pavilion. The management and control of the ground was undertaken by a committee from two clubs, the members of which comprised the headquarters staff of the company. The use of the ground was confined to the employees of the company, the expenses of running it being partly paid by the employees and partly by the company. Quarter sessions held that the company were entitled to relief from rates under s. 8 (1) (*c*) in respect of the ground. On appeal by the rating authority to the Divisional Court it was contended that the words " occupied for the purposes of a club " should be construed as meaning " occupied exclusively for those purposes ", and that, as the insurance company itself had derived benefit from the sports ground in so far as it was an inducement to employees to enter its employment and thereafter be kept in good health, it could not be said that the ground was " occupied exclusively " for the purposes of a club:—*Held*, there was no reason for reading the word " exclusively " into the sub-section in the manner suggested; if there were any substance in the suggestion that the insurance company itself derived benefit from the club, quarter sessions had rightly held that that benefit was too remote to be taken into account, and, therefore, the appeal must be dismissed. (Royal London Mutual Insurance Society, Ltd. *v.* Hendon Borough Council. Q.B.D.) 310

17. Shop premises; agreed valuation by parties of part of hereditament; jurisdiction of Lands Tribunal to make different valuation; shop partitioned by ratepayer; valuation as single shop.—The ratepayers were the occupiers of a lock-up shop in a newly erected building, of which shop they were tenants under a 99 years' lease commencing in 1954. They put up a partition and divided a single room into a sales

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shop and a store room and " preparation room " behind it. In the valuations submitted by the parties in accordance with the Lands Tribunal Rules, 1956, the sales shop was divided into the front portion, " Zone A," and the rear portion, " Zone B." Both parties put the same value on the store room and " preparation room," and they agreed that the value of " Zone B " was half of that of " Zone A." The issue before the tribunal was the value of " Zone A." The corporation valued it at 26*s. per square foot* and the ratepayers at 21*s.* A valuation officer called by the ratepayers put forward as value of " Zone A " 21*s. per square foot*, but valued the store and preparation room at 5*s.* 3*d.* The Lands Tribunal decided the gross value of the hereditament by valuing " Zone A " at 24*s.*, " Zone B " at 12*s.* and the rear portion at 6*s. per square foot* on the ground that the ratepayers took a " shell " and fitted it out to suit their own particular trade. The ratepayers appealed to the Court of Appeal contending that the tribunal erred in law in the following manner: (i) There was no issue between the parties as to the value of the rear portion of the shop premises, and by determining that issue the tribunal exceeded its jurisdiction; and (ii) the tribunal disregarded the principle of *rebus sic stantibus* under which the hereditament was required to be valued as it stood at the date of the relative proposal and not when the ratepayers first occupied it:—*Held*, (i) if two contesting parties were clearly to agree the value of some part of the subject-matter, *prima facie* the tribunal would have no jurisdiction to depart from that value, unless it appeared that the agreed figure proceeded on some premises which was shown to be wrong in law; in the present case, however, no clear agreement was reached as to the figure for the store room and " preparation room," the testimony of the valuation officer had thrown the matter open, and there was no excess of jurisdiction;—(ii) although the subject-matter to be rated were the premises to be found at the relevant date, the fact that there was a partition of some kind did not, as a matter of law, lead to the result that the part of the premises behind the partition was no longer any real part of the shop and was severed from it, and, therefore, the tribunal was entitled to treat the premises as a single shop, and value it accordingly. (Sheffield Corporation *v.* Meadow Dairy Co., Ltd. C.A.) 274

REQUISITION

Compensation; right to compensation; sale of requisitioned property; de-requisition before completion; Compensation (Defence) Act, 1939, s. 2 (3).—On January, 26 1956, the vendor agreed to sell to the purchaser freehold property described in the contract of sale as 77, Glendale Avenue, Edgware. At the date of the contract the property was requisitioned by the local authority under emergency powers. It became de-requisitioned on February 6, 1956, and on February 23, 1956, the vendor conveyed the property to the purchaser. Compensation for dilapidation during the requisitioning period became due at the end of that period, *i.e.*, February 6, 1956. By s. 2 (3) of the Compensation (Defence) Act, 1939, compensation shall be paid to the person who is at the end of the requisition period the " owner of the land." By s. 17 (1) " owner " is defined as " the person . . . who would receive the rackrent of the land if it were let at a rackrent." The purchaser claimed the compensation money on the ground that, although the vendor was the owner at the relevant date and could give a valid discharge to the local authority for the receipt

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of the money, he obtained it as his trustee:—*Held*, the vendor, as owner, was entitled to receive the money and to retain it, there being no provisions in the contract of sale to make him a constructive trustee for the purchaser of that money. (*Re* Hamilton-Snowball's Conveyance. Ch.D.) 305

ROAD TRAFFIC

1. Causing death by dangerous driving; momentary act of negligence; Road Traffic Act, 1956, s. 8 (1).—A momentary disregard of safety precautions or a momentary act of negligence on the part of the driver of a motor-vehicle may amount to dangerous driving within s. 8 (1) of the Road Traffic Act, 1956. (R. *v.* Parker. C.C.A.) ... 17

2. Dangerous driving; defence; automation; failure to conform to traffic sign; *mens rea* not an element of offence; burden of proof; Road Traffic Act, 1930, s. 11 (1).—The offences of dangerous driving, contrary to s. 11 (1) of the Road Traffic Act, 1930, and of failing to conform to a traffic sign, contrary to s. 49 (*b*) of the same Act, are offences in which absolute prohibitions are enacted, and neither *mens rea* nor intention is an ingredient in either of them. On informations for the above mentioned offences the driver of a motor car gave evidence that he remembered nothing after driving to a point some distance from the scene of an accident in which he was involved. The magistrates accepted his evidence, but found that he must have exercised care and skill in driving to reach the place where the accident occurred from the point at which his memory, according to his evidence, failed. They dismissed both informations, being of opinion that he was not conscious at the time of the accident " with the implication that he was not capable of forming any intention as to his manner of driving ":—*Held*, that, though there might be cases in which a person at the steering-wheel of a moving motor-car could be said not to be driving at all, *e.g.*, where he had been overcome by a sudden illness or struck by a stone or attacked by a swarm of bees, in the present case the evidence showed that the defendant was driving the motor car and there was no evidence to justify the magistrates in finding that he was not fully responsible in law for his actions. The case, therefore, must be remitted to the magistrates with a direction to convict on both offences. There is no decided authority on how far or in what circumstance automatism can be a defence to a criminal charge. On such a defence (*per* LORD GODDARD, C.J.) the burden of proof would be on the defence; (*per* DEVLIN and PEARSON, JJ.) the defence would have to produce at least *prima facie* evidence before such a defence could be considered, but the question where the burden of proof would ultimately rest should be left open for decision. (Hill *v.* Baxter. Q.B.D.) 134

3. Motor vehicle; construction and use; trailer; " heavy duty car ambulance "; failure to provide with mudguards and suitable springs; Motor Vehicles (Construction and Use) Regulations, 1955 (S.I. 1955, No. 482), regs. 9, 58.—A garage proprietor was instructed to tow away a damaged car from the scene of the accident. He took with him a towing implement known as a " heavy duty car ambulance " or " mobile car jack ", which consisted of a long tow bar with two wheels on a short axle at right angles to the tow bar. He was convicted on informations alleging that he was using a trailer (*a*) in contravention of reg. 58 of the Motor Vehicles (Construction and Use) Regulations, 1955, in that the trailer was not provided with

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mudguards, and (*b*) in contravention of reg. 9 in that it was not equipped with sufficient and suitable springs between each wheel and the frame of the trailer:—*Held*, the implement in question was a trailer and contravened the regulations, and, therefore, he was rightly convicted. (Wilkinson *v.* Barrett. Q.B.D.) 349

4. Notice of intended prosecution; letter from police to defendant stating no further action would be taken; subsequent letter stating prosecution would be instituted; validity of original notice; Road Traffic Act, 1930, s. 21 (*c*).—On February 11, 1958, the appellant was involved in a traffic incident with his motor car. On February 14 a notice of intended prosecution for dangerous and careless driving, given on the instruction of the Commissioner of Police for the Metropolis, was sent to him. The notice gave all necessary particulars and complied with s. 21 (*c*) of the Road Traffic Act, 1930. On February 27 the appellant received a letter written on the instruction of the Commissioner stating that " after careful consideration the police had decided not to take any further action in the matter ". On March 13 the appellant received another letter, again written on the instruction of the Commissioner, stating that, after further consideration, the Commissioner had decided to prosecute the appellant for dangerous and careless driving. Informations for both offences were preferred against the appellant at a magistrate's court, and the appellant contended that s. 21 of the Act of 1930 had not been complied with as the notice of February 14 had been withdrawn by the letter of February 27. The magistrate held that the notice of February 14 remained valid and was not affected by subsequent events. The appellant then pleaded guilty to careless driving and was fined for that offence, the information for dangerous driving being dismissed. On appeal by the appellant to the Divisional Court:—*Held*, that the notice of intended prosecution having been duly given within 14 days, the only condition precedent to prosecution had been fulfilled; the notice was not invalidated by the subsequent action of the police, inasmuch as it remained open to any member of the public to prosecute the appellant, and it was not possible to read any such words as " and has not been withdrawn " into the conclusion of s. 21 (*c*); and, therefore, the magistrate had rightly decided that the notice of February 14 remained valid. *Per curiam:* It is undesirable that the practice adopted in this case should be followed in other cases. (Lund *v.* Thompson. Q.B.D.) 489

5. Notice of intended prosecution; proof of service; proof that notice was correctly directed, stamped and posted; notice never received by defendant; Road Traffic Act, 1930, s. 21.—A notice of intended prosecution for careless driving was addressed by registered post to the defendant on June 20, 1957, ten days after the accident which gave rise to the prosecution. The notice was addressed to the address given by the defendant to the police officer who had investigated the accident. The defendant did not receive the notice because he was away from his home on holiday from June 15 to 22 and between those days there was no one at his home. On June 27 the notice and its envelope were returned to the police by the Post Office. The prosecutor made no inquiries with regard to the defendant's whereabouts, nor did he consult the employers in whose employment he knew that the defendant was:—*Held*, that it was not enough to prove that the notice was correctly directed, stamped and posted, but it was open to the defendant to show that the letter containing the

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notice had never been received; as he could do so, and as the prosecution on the facts of the case could not bring themselves within the proviso to s. 21, there had been no valid service of the notice and no compliance by the prosecution with the requirements of s. 21. (Beer *v.* Davies. Q.B.D.) 344

6. Regulation of traffic; "one-way street"; order for six months' summer season; Town Police Clauses Act, 1847, s. 21; Crown; Treasury Solicitor; appearance for local authority; interest of Crown. —By s. 21 of the Town Police Clauses Act, 1847, certain local authorities were empowered to make "orders for the route to be observed by all carts, carriages, horses, and persons . . . in all times of public processions, rejoicings, or illuminations, and in any case when the streets are thronged or liable to be obstructed . . . " A local authority, purporting to act under the powers conferred by s. 21, made an order, dated March 5, 1957, which, in effect, created for the period of the summer season, *viz.*, from April 19, 1957, to October 19, 1957, a one-way street system in two adjoining streets. Section 46 (2) of the Road Traffic Act, 1930, as amended by s. 29 (4) of the Road and Rail Traffic Act, 1933, gave local authorities express power to make one-way street orders, which, however, would not be effective unless confirmed by the Minister of Transport. The plaintiffs, who owned a hotel in one of the two streets in question, asked for a declaration that the order of March 5, 1957, was *ultra vires* the powers contained in s. 21 of the Act of 1847 on the grounds (i) that a one-way street order was not an order for "the route to be observed" by vehicles; and (ii) that the powers were limited to special or extraordinary occasions and did not provide authority for the making of orders for an indefinite period. VAISEY, J., held that the order made by the local authority was *ultra vires* and void, and the local authority appealed. On their behalf it was submitted (i) that in 1914 the Divisional Court in Teale *v.* Williams (1914) 78 J.P. 383 decided that s. 21 of the Act of 1847 was not confined to special occasions, that that decision had been followed ever since, and that it should not be overruled; (ii) alternatively, that the summer season was a "special occasion". The plaintiffs raised the preliminary point that the appeal was not properly before the court because the Treasury Solicitor, acting on the instructions of the Minister of Transport and Civil Aviation, was not entitled to represent the local authority, as the Crown had no interest in the subject-matter in suit, the order complained of had lapsed, and the only question was one of costs between the parties:—*Held*, (i) notwithstanding that the order was no longer in force the general question remained whether the local authority had power to make one-way street orders under s. 21 of the Act of 1847, and, as traffic control was a matter of national concern, the Crown had an interest in the lis which warranted the Treasury Solicitor representing the local authority; (ii) the words "the route to be observed" in s. 21 were wide enough to allow the making of one-way street orders, but the order of March 5, 1957, was *ultra vires* and void because the general words in s. 21 "in any case when the streets are thronged or liable to be obstructed" must be limited so as to be applicable to instances of particular and extraordinary occasions, and (*per* ROMER, L.J.) the six months' summer season could not be regarded as such a special occasion or event. Teale *v.* Williams, *supra*, overruled. Decision of VAISEY, J., (121 J.P. 571) affirmed on other grounds. (Brownsea Haven Properties, Ltd. *v.* Poole Corporation. C.A.) 96

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SHOPS PAGE

Sunday trading; mobile van equipped as shop; sale of goods in street; portion of street where van stopped not a "place" where business carried on; Shops Act, 1950, s. 47, s. 58, s. 74 (1).—The respondent owned a motor van which was equipped as a mobile shop and was stocked with a variety of goods. On a Sunday, in the course of his usual round, he stopped the van in a street, and sold to a customer who was standing in the roadway a packet of tea. Justices dismissed an information charging the respondent that, being the person then carrying on retail trade at a certain place, namely, the portion of the street where he stopped his van, he did not close that place for the serving of customers on the Sunday, in that he there sold a packet of tea, contrary to s. 47 and s. 58 of the Shops Act, 1950. By s. 74 (1) of the Act "shop" is defined as including any premises where any retail trade or business is carried on, and, by s. 58, the provisions with regard to Sunday closing are extended to "any place where any retail trade or business is carried on as if that place were a shop":—*Held*, that a mobile travelling van from which sales are made is not a "shop" within s. 74 (1); that the portion of the street where the respondent stopped his van did not become a "place" where the respondent was carrying on a retail trade or business within s. 58 merely because the respondent had stopped there to make a sale; and that the justices were, therefore, right in dismissing the information. (Stone *v.* Boreham. Q.B.D.) 418

TOWN AND COUNTRY PLANNING

1. Development value; determination; estate acquired for building purposes; heavy expenditure to make part of land suitable; no development value for whole land; Town and Country Planning Act, 1947, s. 70.—The county council acquired an estate of 231 acres for the purpose of developing it as a housing estate. The greater part of the land was suitable for building houses, but on part of it the council had to meet heavy expenditure on site works so that the cost of those works was in excess of the value of the land as a whole for building purposes. The Central Land Board claimed £22,500 as a development charge on the footing that the permission had increased the value of the land in that the county council was at liberty to carry out the development as far as it was profitable and was under no legal obligation to develop the whole land:—*Held*, the development charge had to be assessed regarding all the land in respect of which permission was granted and on the assumption that all the operations would be carried out, and, as the value of the land as a whole was not increased by the permission if all the operations were carried out, no development charge had to be paid. (London County Council *v.* Central Land Board. Ch.D.) 288

2. Enforcement notice; alleged discontinuance of use of land and commencement of new use; no material change in use; long interval of interruption of use; Town and Country Planning Act, 1947, s. 23.—Enforcement notices under s. 23 of the Town and Country Planning Act, 1947, were served on the owners and occupiers of a site, who appealed, as persons aggrieved by the notices, to a magistrates' court under s. 23 (4). The site was requisitioned in 1943 and remained requisitioned until December 1, 1950. During the period of requisition it was used, among other purposes, for the storage of materials. From May, 1949, to December, 1956, the site was not used at all,

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except from December, 1953, to March, 1954, when it was again used for storage purposes. After about July, 1956, it was again used for storage purposes by the owners and occupiers. The justices found that there had been no material change in the use of the land since the appointed day (July 1, 1948), but dismissed the appeals on a ground which the planning authority did not seek to support on appeals by the owner and occupier to the Divisional Court. They contended, however, that the justices' decision could be supported on another ground, namely, that the previous use of the land had been discontinued and a new use began in July, 1956:—*Held*, that, even though the land had been for some years put to no use, the justices were fully entitled to come to the conclusion that since the appointed day there had been no material change in the use of the land, and that on that finding the appeals must be allowed. (Fyson *v.* Bucks. County Council. Metal Recovery and Storage Co., Ltd. *v.* Same. Q.B.D.) 333

3. Enforcement notice; appeal to magistrates' court by person aggrieved; jurisdiction of justices; consideration of question of development or no development; Town and Country Planning Act, 1947, s. 12 (2), s. 17 (2), s. 23 (4).—On an appeal under s. 23 (4) of the Town and Country Planning Act, 1947, to a magistrates' court by a person aggrieved by the service of an enforcement notice, the court has no jurisdiction to determine whether or not the matters referred to in the notice constitute development within s. 12 (2) of the Act; so held by HILBERY and DONOVAN, JJ., (LORD GODDARD, C.J., dissenting). *Per* HILBERY and DONOVAN, JJ.: In so far as the proviso to s. 17 (2) of the Act of 1947 purports to give an appeal to a magistrates' court on the question of development or no development, it is repugnant to s. 23 (4), which subsection must be regarded as having an overriding effect. (Eastbourne Corporation *v.* Fortes Ice Cream Parlour. Q.B.D.) 324

4. Enforcement notice; notice complaining that development carried out without permission; temporary permission in fact given by Minister after development carried out; use continued after expiry of temporary permission; no appeal to justices against notice; validity of notice; right to question validity in High Court; Town and Country Planning Act, 1947, s. 23 (1) (4).—On February 1, 1949, an occupier of land within the area of the defendant local authority began to use the land as a caravan site, and thus carried out a "development" of the land within the meaning of the Town and Country Planning Act, 1947. By virtue of art. 3 (1) and sch. I, class iv (i), of the Town and Country Planning (General Development) Orders, 1948 and 1950, no permission was or is required for such use for a period not exceeding 28 days in any one year. The occupier, however, continued this use, and on March 1, 1949, applied to the local authority (to which the relevant powers of the local planning authority had been delegated) for the necessary planning permission, which the local authority refused. On February 22, 1950, the Minister, on an appeal by the occupier, "decided to allow the appeal to the extent that he permits the use under appeal for a period of six months from the date of" his decision. The occupier continued the use for more than the six months, and on July 23, 1952, the local authority served him with an enforcement notice under s. 23 of the Act, alleging that the "development . . . was carried out without the grant of planning permission required under part III" of the Act and requiring him

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within 28 days of the service of the notice " to remove all caravans from the site ". The occupier did not exercise the right to appeal against the notice to a magistrates' court given him by s. 23 (4) of the Act, but continued to use the land as a caravan site. The local authority took no steps under s. 24 (3) of the Act to prosecute the occupier, who, on December 29, 1955, brought an action in the High Court for a declaration that the enforcement notice was invalid:—*Held*, the occupier was entitled to the declaration because (i) although the notice did sufficiently " specify the development which is alleged to have been carried out without the grant of permission " to comply with s. 23 (1) of the Act, it was invalid because it proceeded on a wholly false basis of fact in that it stated that the development had been carried out without permission whereas in fact, the Minister had granted permission, albeit subsequently to the carrying out of the development and then only for six months; and, therefore, the notice was not a proper notice setting out the real grounds of the complaint or claim against the occupier to which he was entitled. East Riding County Council *v.* Park Estate (Bridlington), Ltd. (1956) 120 J.P. 380 applied; (ii) the occupier's failure to appeal against the enforcement notice did not preclude him from maintaining his claim for the declaration that that notice was invalid. Perrins *v.* Perrins (1951) 115 J.P. 346 overruled. (Francis *v.* Yiewsley and West Drayton Urban District Council. C.A.) 31

5. Enforcement notice; validity of notice; application by originating summons for declaration that notice invalid; Town and Country Planning Act, 1947, s. 23 (2), (3); R.S.C., Ord. 54a, r. 1, r. 1a.—An enforcement notice served on the occupier of land under s. 23 (1) of the Town and Country Planning Act, 1947, required him to take the following steps (to restore the land to agricultural land) on or before November 7, 1957, namely, the discontinuance of the use of the land as a caravan park and caravan camp by the removal of all caravans in excess of two in number, such number to include one caravan stationed within the curtilage of the dwelling-house. It was stated that the notice was to take effect on October 31, 1957. The occupier contended that the notice failed to comply with s. 23 (2) and (3) of the Act of 1947, and applied by summons under R.S.C., Ord. 54a, r. 1, for a declaration that the notice was void and of no effect:—*Held*, in claiming that the notice was invalid as not complying with the Act of 1947, the occupier was not a person " interested under a . . . written instrument " within R.S.C., Ord. 54a, r. 1, nor " claiming [a] legal or equitable right " which depended on the construction of a statute within R.S.C., Ord. 54a, r. 1a, and accordingly, the validity of the enforcement notice could not be determined by summons. (Rigden *v.* Whitstable Urban District Council. Ch.D.) 415

6. Enforcement; persistent evasion of statute; injunction; Town and Country Planning Act, 1947, s. 12.—In March, 1955, the first defendant began to use land belonging to him as a caravan site without obtaining planning permission. In April, 1955, an enforcement notice was served on him by the local planning authority under the Town and Country Planning Act, 1947, requiring him to remove the caravans from the land. He then applied for planning permission to use the land as a caravan site, but this was refused in May, 1955, and he appealed to the Minister of Town and Country Planning. An inquiry was held and on December 31, 1955, the Minister dismissed the appeal. The first defendant, however, continued to use the land as a

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caravan site. In May, 1956, a further enforcement notice was served on him by the local planning authority, and in June, 1956, he made another application for planning permission, which again was refused. The caravans remained on the site and in September, 1956, the first defendant was fined £25 for failing to comply with the enforcement notice of May, 1956. In October, 1956, after the local planning authority had taken out a summons for the daily penalty, the first defendant moved the caravans to a second site, which was the adjoining field. In November, 1956, he applied for planning permission in respect of that site, and that application was refused in January, 1957. In February, 1957, the local planning authority served an enforcement notice in respect of the second site, and in March, 1957, the first defendant moved the caravans from that site. In January, 1957 the defendant began to use a third site for caravans. Planning permission was applied for, but was refused in February, 1957. An appeal was made to the Minister which, after an inquiry, was dismissed in July, 1957. In August, 1957, planning permission was sought to put the caravans on another part of the third site, which was refused in September, 1957. The local planning authority served further enforcement notices in October, 1957, and in November, 1957, an appeal was made to the Minister which was dismissed. The Attorney-General, at the relation of the local planning authority, brought an action against the defendants for an injunction restraining the defendants from using or causing or permitting to be used as a caravan site any land within the boundaries of the local planning authority without the prior grant of planning permission under the Act. At the date of the hearing the caravans were still on the third site:—*Held*, as the Attorney-General was suing for the purpose of enforcing a public right, even though that right was conferred by a statute which prescribed penalties for acts done in breach of it, the court had jurisdiction to grant an injunction: A.-G. *v.* Wimbledon House Estate Co., Ltd. (1904) 68 J.P. 341, and A.-G. (on the relation of Hornchurch Urban District Council) *v.* Bastow (1957) 121 J.P. 171, applied: and, as the defendants had shown an intention to act in breach of the Act of 1947 so far as they could and for so long as they could, an injunction would be granted. (Attorney-General (at the relation of Egham Urban District Council) *v.* Smith and Others. Q.B.D.) ... 367

7. Permission for development; outline permission; design and siting reserved for subsequent approval; subsequent application for approval on reserved matters refused on ground that development contrary to planning authority's proposals for the area; Town and Country Planning General Development Order and Development Charge Applications Regulations, 1950 (S.I. 1950 No. 728), art. 5 (2).—In 1955 an applicant applied, under the Town and Country Planning General Development Order and Development Charge Applications Regulations, 1950, art. 5 (2), for outline planning permission to erect a replacement cottage on a farm. Outline planning permission was granted subject to the approval of the local planning authority of certain matters, *viz.*, the design and siting of the cottage. Under art. 5 (2), proviso (i), approval had to be obtained before the development was begun, and a limit of two years for obtaining approval was fixed in the outline permission. In 1956 the applicant applied for the necessary approval, but the application was refused on the ground that the development was contrary to the planning proposals for the area. The applicant claimed a declaration, *inter alia*, that the outline permission was a good and valid permission within the Town and

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Country Planning Act, 1947, and entitled her to proceed with the erection of the cottage. The local planning authority conceded that, unless the 1956 application could be regarded as a fresh application, their reasons for withholding planning permission on that application were wrong. The court inferred as a fact that the local planning authority had considered the matters reserved in the 1955 outline permission when the 1956 application was considered and found nothing to which they objected:—*Held*, the outline planning permission had become a good and valid planning permission, and the local planning authority, therefore, could not properly withhold approval. (Hamilton and Another *v.* West Sussex County Council and Another. Q.B.D.) 294

8. Permission for development; refusal; "development authorized by local or private Act"; agreement between quarry-owners and local authority as to areas to be quarried; agreement "confirmed and made binding" by local and private Act; permission granted subject to conditions; conditions as to land not included in application for permission; validity; action for declaration as to validity of refusal and conditions; jurisdiction of High Court; Town and Country Planning Act, 1947, s. 14 (2), s. 17 (1).—In 1924 a quarrying company owned certain freehold lands and had quarrying rights on other land in the Malvern Hills. During the passage through Parliament of the Bill for the preservation of the Malvern Hills, which ultimately became the Malvern Hills Act, 1924, negotiations took place between the company and the promoters of the Bill, the Malvern Conservators and the Malvern urban district council, which resulted in an agreement between the parties that the company should continue to quarry on its freehold land, should abandon its quarrying rights in a certain area of other land, should retain its quarrying rights in part of other land known as the N. area, and should have transferred to it additional rights in other parts of the N. area. The terms of this agreement were embodied in heads of agreement which were drawn up, but not executed, before the Bill became law, and were set out in sch. 4 of the Act. The Act provided, by s. 54, that "for the protection of the company, the following provisions shall, unless otherwise agreed in writing between the company and the conservators and the Malvern council, have effect (that is to say): the heads of agreement . . . are hereby confirmed and made binding on the company and the conservators and the Malvern council, and the provisions of this Act shall only apply to or affect the undertaking property or rights of the company subject to the provisions of the said heads of agreement". The heads of agreement contemplated the execution of a formal agreement, which was ultimately effected by a deed, made on December 14, 1925, and executed by the company, the conservators and the council, whereby the agreed areas in which the company should quarry were defined. On November 17, 1947, the company applied to the council for planning permission to develop two of the agreed areas of land for quarrying purposes. One of these areas, the T. area, was the freehold property of the company, the other was the N. area. On January 14, 1948, the Minister called in this application for decision by himself. In July, 1952, a public inquiry was held and the company invited the dismissal of their application on the ground that the proposed development was authorized by the Act of 1924 and so was within class 12 of the General Development Orders as being "development authorized by any local or private Act of Parliament . . . which designates specifically both the nature of the development thereby

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authorized and the land upon which it may be carried out". The Minister, having rejected this submission, on September 30, 1953, refused permission to work parts of the T. area, granted permission to work the remainder of the T. area only on conditions and only until June 30, 1960, and refused permission for any work in the N. area except the minimum required to secure safety from a threatened fall of rock. The company intended to crush and screen the stone to be quarried from the T. area on some of their other land, which was very near, with plant and machinery which was already installed there. As this plant and machinery had been in use on the same land since before 1947 no planning permission was required for its use or maintenance there, and so no application for any planning permission in respect of this land was made. Nevertheless, the conditions on which the Minister granted permission to work part of the T. area limited the times when the crushing and screening plant and machinery could be used and required its eventual removal. In December, 1953, the company issued a writ for declarations (*a*) that it was entitled to carry out the proposed development without obtaining any special planning permission, and (*b*) that the above conditions as to crushing and screening were invalid in that they applied only to land in respect of which no application to develop had been made. The planning authorities contended, *inter alia*, (i) that the court had no jurisdiction because s. 17 of the Act of 1947, by providing for applications to the Minister to determine whether planning permission was required to be obtained for any proposed development, impliedly excluded the right to apply to the Court for such a declaration; (ii) that the proposed development was not within class 12; (iii) that the wide discretion to impose conditions conferred by s. 14 of the Act of 1947, and the availability of the alternative remedy of *certiorari*, each prevented the exercise of that discretion being questioned by proceedings for a declaration:—*Held*, (i) the conditions related to "the carrying out of works on" land under the control of the company, and, as the plant and machinery were ancillary to the getting of stone from the permitted quarries, could properly be regarded as expedient "in connexion with" the permitted development, and, therefore, they were within s. 14 (2) and were valid; (ii) (*per* LORD DENNING and MORRIS, L.J.), the Court had jurisdiction to make the declarations sought because, as to declaration (*a*), there was nothing in the Act of 1947 which debarred a developer from seeking such a ruling of the High Court; and, as to declaration (*b*), the remedy applied to administrative acts as well as to judicial acts whenever their validity was challenged because of a denial of justice or for other good reason, and the facts that the conditions imposed would operate as a land charge and that there was no statutory remedy available for the purpose were such good reasons; (iii) (*per* LORD DENNING and HODSON, L.J.), the proposed development was authorized, not by the Act of 1924, but by the heads of agreement, and so was not within class 12 and special planning permission was necessary, because, although the heads of agreement amounted to an implied agreement by the conservators and the council authorizing the company to quarry stone within the agreed limits, and although the agreement was "confirmed and made binding" by s. 54 of the Act, s. 54, which contemplated the execution of the formal agreement of December 14, 1925, did no more than make the unexecuted heads of agreement as binding as a contract, and so their provisions could not be regarded as equal to a statute, or as carrying the authority of Parliament, but only as of contractual force: R. *v.* Midland Ry. Co.

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(1887) 10 Q.B.D. 540, applied. *Per* LORD DENNING (MORRIS, L.J., concurring): *Certiorari* was confined to judicial acts, and it could be argued that the Minister, when granting planning permission, was acting, not judicially, but administratively, and that his decision was, therefore, not subject to *certiorari*. If the Minister had sought to impose like conditions about plant or machinery a mile or so away, it might well be that could only be done by an order under s. 26. (Pyx Granite Co., Ltd. *v.* Ministry of Housing and Local Government and Another. C.A.) 182

9. Purchase notice; refusal by Minister to confirm; permission for development of another kind in lieu of confirmation; development contemplated not within sch. 3 to Town and Country Planning Act, 1947; decision of Minister *ultra vires*; Town and Country Planning Act, 1947, s. 19 (2), s. 19 (2A) (added by Town and Country Planning Act, 1954, s. 70).—The applicants, who were the lessees of a vacant site, applied to the local planning authority for permission to build shops with living accommodation over them. On the application being refused, the applicants served on the local planning authority a purchase notice under s. 19 (1) of the Town and Country Planning Act, 1947. The Minister of Housing and Local Government refused to confirm the purchase notice, but, in lieu of confirmation and in purported exercise of his powers under s. 19 (2) (*b*) of the Act of 1947, as amended by s. 70 of the Town and Country Planning Act, 1954, directed that, in the event of an application being made in that behalf, permission should be granted for residential development of the land. Residential development was not development of a class specified in sch. 3 to the Act of 1947, and the applicants applied for *certiorari* to quash the Minister's decision on the ground that it was *ultra vires*:—*Held*, that the new subs. (2A) of s. 19 of the Act of 1947 applied to the whole of the preceding subs. (2), including proviso (*b*), and, therefore, under proviso (*b*) the only development for which the Minister could direct permission to be granted in lieu of confirming a purchase notice was development within sch. 3 to the Act of 1947; development in this connexion appeared to be limited to physical development; and as the development for which permission had been directed to be granted in the present case was not development within sch. 3, the Minister's decision was *ultra vires* and *certiorari* to quash it must issue. (R. *v.* Minister of Housing and Local Government. *Ex parte* Rank Organization, Ltd. Q.B.D.) 485

Printed by R. J. ACFORD LTD., Industrial Estate, Chichester, and Published by the Proprietors, Justice of the Peace Ltd., at the Office of the "Justice of the Peace and Local Government Review," 88 Kingsway, London, W.C.2, and Little London, Chichester—*Saturday*, January 24, 1959. Price 2*s*. 0*d*.